Haz. Shah Wali Allah in the Mirror of his Juristic Views and Services

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Dedication

I dedicate this book to the Jamia Rabbani, an institution of higher Islamic religious learning, the central point of my best wishes and the essence of all my religious and academic pursuits.

May Allah place it in His good acceptance. (Amin)

Akhtar Imam Adil Qasmi

Table of Contents

Table of Contents iv

Opening Lines 1

Hazrat Shah Wali Allah A short Biographical note 3

- Education 4
- The Syllabus followed by the Shah 4
- Tutorship of Shah's father 6
- Marriage 7
- Second Marriage 7
- Pilgrimage voyage 8
- Mentors of the Shah 9
- Teaching of Hadith 11
- Death 12
- Note 13

CHAPTER-I 14

Outstanding reformatory services of the Shah towards the Islamic Fiqh 14

- Reconciliation between Fiqh and Hadith 14
- The Moderate View 18
- Legitimacy of Taqlid 19
- Characteristics of the Four Juristic Schools 21
- Necessity of Ijtihad 22

CHAPTER-II 24

People's estimation of the Shah as mujtahid-e-muntasab 24

CHAPTER-III 29

A brief descriptive survey of Haz. Shah Wali Allah's epoch-making achievements and great reformative services to the overall academic enterprise of his contemporary world of Islam and of the influence he exerted on subsequent Muslim generations 29

CHAPTER-IV 34

A realistic assessment of the Shah as a Faqih, the Intellectual and Academician 34

CHAPTER-V 39

Some Juristic views and Discussions of Haz Shah Wali Allah 39

- Linking Fiqh to its original sources 39
- The Way the Ummah Received the Divine Law from the Prophet (SAWS) 39
- Judging Among Divergent Hadiths 42
- Under plausible interpretations come: 44

CHAPTER-VI 49

Shah Wali Allah's position and place in the order of the Fuqaha and His approach to Fiqh and Jurispredence 49

CHAPTER-VII 50

The Causes of the Disagreement of the Companions and the Successors Concerning Applied Jurisprudence (al-Furu) 50

- Differences of opinions amongst the Fuqaha 58
  - Prefatory Note 58

CHAPTER-VIII 61

The Causes for Disagreement among the Schools of the Jurists 61

CHAPTER-IX 69

The Difference Between the People of the Hadith and Those Who Exercise Personal Opinion 69

CHAPTER-X 81

An Account of the Condition of People Before the Fourth Century and After 81

Subsection 84

Examples of Type A 98

Examples of Type B 98

Examples of Type F 99

Examples of Type E 99

CHAPTER-XI 102

Ijtihad – Meaning and Grades 102

The Meaning of Ijtihad 102

The Task of the Mujtahid 102

Basic Assumptions Made by the Mujtahid 103

Texts That are not Subject to Ijtihad 104

The Three Modes of Ijtihad 105

The first mode 105

The second mode 106

The third mode 106

The Complete Process of Ijtihdd 106

Ijtihad and its Types 107

The Qualifications of the Mujtahid 108

Taqlid as a Methodology 109

Taqlid as a Basis for the Islamic Theory of Adjudication 110

Literal Meaning of Taqlid 111

Technical Meanings of Taqlid 111

The Hukm of Taqlid and Ijtihad 112

Taqlid in Law is an Exemption from the General Rule of Prohibition 112

Taqlid and the Islamic Legal System 114

The mujtahid and the faqih 116

CHAPTER-XII 119

Preliminary note 119

Peacefulness of His Mind 119

CHAPTER-XIII 121

Writings of Shah Wali Allah on Fiqh 121

Significance of Izalat al –Khifa 124

Correlation between Hujjat Allah and Izalat al-Khifa 125

Acknowledgement 127

Bibliography 128

Opening Lines

Shah Wali Allah of Delhi holds outstanding importance in the south Asian Muslim religious history, especially in respect of Islamic scholarship in general and the hadith in particular, Numerous books, both small and voluminous, have been written to deal with different aspects of his personality and services. Various periodical and magazines published special issues about him. A number of academies and research institutions in India and Pakistan has been established to introduce his academic legacy to the world at large and to carry forward his mission. With the same aims and objectives more institutions are coming into existence with the passage of time.

Strangely enough, the amount of attention paid to acknowledge the Shah's services to the areas of the Qur'an and hadith and allied branches is far greater as compared to that exclusively intended to assess his services he rendered to the area of Islamic fiqh and jurisprudence and his historic contribution to enrich it, his bold criticism of blind adherence to the juristic schools, harmonization of reason and religious thought and coordination of different juristic thought. Perhaps that is why even after passing almost three centruies over his demise, one is not certain to tell to which school of jurisprudence the Shah stood affiliated. The Shah's special juristic views stand in need to be subjected to research and scholarly analysis.

Of late, a noted Islamic scholar and author from Mumbai was kind enough to visit our Jamia Rabbani. He said that a detailed work on Shah Wali Allah's juristic views was published in Pakistan but he was not able to have even a single copy of it even after all possible search.

Right from my days of studentship I had a keen curiosity to understand the Shah, his position and place in the midst of the reformers and renovations. Ever since I attained some sense of knowledge and learning I continually heard his name from my teachers. When I got admission to the Darul-Uloom Deoband, I was taught that the Deobandi persuasion stood for the thoughts of Shah Wali Allah. All such things prompted me to understand this great man and scholar. During my studentship at Deoband when I first happened to see the *Hujjatulla al-Balighah.* I got intellectually embarrassed. In particular, his analyses and comments on a number of juristic concepts and popularly- held views gave a greater shock to the concepts of my traditional learning and scholarship. In order to get my self out of this shocking embarrassment. I submitted my critical notes to a teacher of mine (whom I regard my benefactor and mentor and in those days I would rely upon his single person to consult in all my intellectual and academic questions and problems). Since my mode of thinking was not proper and the tone of writing too was unpalatable rather immature, he returned my stack of papers without any answer or touching. It grieved me for a while but my passion for further study about him the and of all of his important works and understand him in the light of his legacy my this voyage in which I had no companion except the books, continued for years and eventually I was satisfied with the Shah's juridicial views. I, however, was not thus far able to arrange my views in the form of a systematic writing.

It was a stroke of good luck that the Delhi-based Shah Wali Allah Institute invited me to read in its seminar on the Shah a paper on his services to the Islamic Fiqh and jurisprudence. Although I could not attend the seminar due to a number of reason personal al together, yet I was able to give a systematic shape to the entire collection of the notes and memoirs for which my random study, extending over a number of years stood and which was thus far lying without an order or arrangement. Present book is the gist of my this long voyage.

Here I did not intend to discuss all juristic views of the Shah. Such a comprehensive attempt will require a full-fledged book. I have kept myself limited to deal with only those ideas of the Shah which clear his distinction and bring into sharp focus his position as a renewer and revivalist of the Islamic scholarship. The learned readership is earnestly solicited to go through the book and favour the author with their valuable comments.

Akhtar Imam Adil Qasmi

Jamia Rabbani Manorwa Sharif, Samastipur, Bihar

Safar 28, 1425 H.

Hazrat Shah Wali Allah
A short Biographical note

Shah Waliullah1 was born at dawn on Wednesday, the 4th of Shawwal 1114/10th February. 1703 at Phulat (now in district Muzaffarnagar) in the house of his maternal grandfather. His year of birth can be computed from his chronogrammatic name Azim-ud-din, Shah `Abdur Rahim was sixty years of age at the time of Shah Waliullah's birth. It is related that Shah 'Abdur Rahim decided to contract the second marriage while his first wife, the mother of his eldest son Shaikh Salah-ud-din was still alive on having the divination of a son from another wife'. Shaikh Muhammad of Phulat on coming to know of the intention. of Shah 'Abdur Rahim, offered the Shah to give his daughter in marriage which took place early in the year Shah Waliullah was born.

The name of Shah Waliullah's mother given in the Al-Qaul-a-Jali was Fakhr-un-Nisa. The author of this book Shaikh Muhammad who happened to be a nephew of Shah's mother, reports that she was well-versed in religious disciplines. He says : "His (Shah Waliullah's) mother had received schooling in the Qur’an and hadith, was adept in the spiritual path and a knower of truth. She was as qualified as her name indicated; a pride for the womenfolk."

Shah Waliullah relates that his father had been foretold of his birth in a dream by Khwaja Qutb-ud-din Bakhtiyar Kaki who also asked his father to give his name to the baby. However, Shah 'Abdur Rahim forgot about the instruction of the Khwaja and thus he was given the name of Waliullah. Later on when his father recalled it to his memory, he was by named by him as Qutb-ud-din Ahmad.

Shah Waliuliah was seven years of age when he first joined his parents in the midnight prayer and gave his hand into theirs, as predicted in the vision of his father before his birth.

Education

Shah Waliullah was admitted into the primary school (maktab) at the age of five years. He was circumcised when he had attained the age of seven years, and also started offering prayers regularly. He committed the Qur'an to his memory within a year and started schooling in Arabic and Persian. After he had read the preliminary, text-books ; he studied the Kafiyah. At the age of ten he began the study of the Sharh Jami, Shah Waliullah says that the study of these books had fitted him for going through other books by himself. The Shah poured over a part of Baidawi when he was fourteen and finished his schooling of the then prevalent curriculm at the age of fifteen years. His father invited a large number of guests to partake in a repast on that occasion.

The Shah then studied a major portion of the Mishkat under his own father and was also taught parts of Sahih Bukhari, Shamia'il Tirmidhi Quranic commentaries of Madarik and Baidwai by him. He says that it was a grace of God that he attended the lectures delivered by his father on the exegesis of the Qur'an which helped him to understand the Qur'an in depth.

The Syllabus followed by the Shah

Shah Waliullah has given in detail the syllabus undergone by him. Fiqh (jurisprudence; included Sharh Waqayah and a part of Hidayah, Usul-Fiqah (juristic principles) had Hosami and the major portion of Taudhih-wa-Talwih, Mantiq (logic) com-prised Sharh Shamsiyah and a part of Sharh Matal'e, Kalam (theological dialectics) included the whole of Sharh-i-'Aqa'ad and certain parts of the Hashiyah-i-Khiyali and Sharh-i-Mawaqif, Suluk (mysticism) had parts of 'Awarif-al-Ma`arf and Rasa'il Naqsh-bandyah, and. Haqa'iq (dogmatics) included Sharh Ruba'iyat-i-Jami and Lawayih Muqaddimah Sharh-i-Lam-at Muqaddimah Naqad al-Nasus, Khawas-i-Asma'-wa-Ayat and AI-Fawayed al-Ma'atah.

The syllabus of Tibb (medicine) included Mujiz, Falsafah (philosophy) had Sharh Hidayat-a1-Hukama and few other treatises, Ma'ani (rhetoric) comprised a greater portion of Mutawwal and the part of Mukhtasar al-Ma'ani containing com-mentary of Mulla Zada and certain books of Mathematics and numerology.

The syllabus undergone by Shah Waliullah was to a large extent prepared by Shah 'Abdur Rahim. In the syllabus pre-valent in India since the seventh century, certain additions relating to theological dialectics, rhetoric and logic had been made by the end of ninth century on the arrival of Shaikh Abdullah and Shaikh 'Azizullah from Multan to Delhi. Then in the tenth century, when Amir Fathullah Shirazi came to Delhi, certain writings of the Iranian scholars like Muhaqiq Dawwani, Mir Sadr-ud-din Shirazi, Mir Ghiyath-ud-din Masur and Mirza Jan also found place in the curriculum. Shah 'Abdul Rahim adopted a selective approach in preparing the syllabus for his son, which showed his realism as well as confidence in the ability and intelligence of his son. He deleted several text-books which were merely repetitive as, for instance, he got him to study only Kafiyah, and Sharh Jami for grammar and syntax in place of Misbah. Lubb-al-Albah (of Qazi Nasir-ud-din Baidawai) and Irshad (of Qazi Shihab-ud-din of Daulatabad). In the juristic principles he taught Hosami and certain parts of Taudih-wa-Talwih in place of the prevalent text-books that is, Manar and its commentary and Usul Bazdawi. He also deleted Kashshaf in exegesis, Mashariq ul-Anwar in hadith and Muqamat Hariri in literature although the last mentioned book was considered an important part of the then curriculum and certain teachers even insisted on memorisation

of a part of the book. It is also possible that a few of the text-books deleted by Shah 'Abdur Rahim might have lost their importance in the pedagogic circles by the beginning of the twelfth century.

It is to be noted that in the twelfth century Mulla Nizam-ud-din of Firangi Mahal, Lucknow, had brought about significant changes in the curriculum of Arabic madrasas. Mulla Nizam-ud-din, who died in 1161/1748 being a bit elder than Shah Waliullah, made significant changes by including new text-books particularly for the study of grammar, etymology and syntax, logic and philosophy, mathematics, rhetoric and theological dialectics. A few additions and alterations came to be made later on by the disciples of Mulla Nizam-ud-din whose curriculum known as Dars-i-Nizarni was voluntarily, adopted by all the educational institutions. It is still prevalent in certain institutions following the old curriculum.

The syllabus reported to have been gone through by Shah Waliullah includes no text-book on Arabic literature although his Arabic works, especially the Hujjat Allah al-Baligha, bear witness to his command over Arabic. The Hujjat Allah al-Baligha even brings into prominence the unique style of the Shah which is not only lucid, simple and direct but also the most appropriate for literary creations and expression of serious thoughts. No writer after Ibn Khaldun can afford to bear compa-rison with the facile pen of Shah Waliullah. It seems that the Shah had, by himself, waded through those living and original works of Arabic literature which were free from the laboured pedantry of the non-Arab style of later period. His stay in Hijaz gave him an opportunity as if through a plan of the Providence, to prepare himself for his great literary works. If the Shah has not inadvertently missed to mention Muqamat-i- Hariri from the course of study pursued by him, it was perhaps better that he did not go through it since the cobwebs spun by the previous generations of imitative writers unable to express their thoughts in a simple and direct style, show influence of the rhyming prose of al-Hariri. All the writers after al-Hariri had imitated his style although his refinements had been rendered archaic with the passage of time: such was al-Hariri's influence that even the legal dicta were phrased by the jurists in the same diction.

The Shah says that he used to have a flow of ideas even in the days he was studying and this went on increasing giadually. During the twelve years, after the death of his father when he taught the students different religious and rational subjects, he got the opportunity to reflect over a variety of issues.

Tutorship of Shah's father

Shah Waliullah says that his father was very kind to him—kinder than any father, teacher or spiritual guide can be to his ward. His father used to teach in a way that his words sank into the heart of the listner. Once the Shah wasted his day in sight-seeking with his friends On his return, the Shah reports, his father said, "Waliullah, did you do anything of lasting value during these twenty-four hours ? I have recited darud so many times today" The Shah, as he says, lost all interest in excursions and thereafter never wasted his time in that manner. His father used to pay particular attention in instructing the Shah about prudence, etiquettes and cool-headedness. The Shah had been instructed by his father to take precedence in saluting those who were lowly and to be kind and courteous to them. He had also warned the Shah against taking a fancy to any particular dress or mode of expression, or showing aversion to a thing edible. His every desire had to be based, as the Shah's father had told him, not on seeking any pleasure but on following some sunnah of the holy Prophet, or meeting any need, or promoting oneself in wisdom and morals. He had also told the Shah that nothing in his mode of sitting or walking should be indicative of indolence or fatigue. Shah 'Abdur Rahim was, according to Shah Waliullah, prudent and courageous, efficient in management of his affairs, zealous in religious matters and moderate in temperament. Shah Waliullah had inherited all these qualities of his father.

Shah Waliullah was also initiated by his father into his spiritual order at the age of fourteen years. He instructed the Shah in the methods of contemplation and self-edification, and also endued him with the robe of mystics. Shah Waliullah was of seventeen years when his father died. During his last illness, Shah 'Abdur Rahim permitted the Shah to enroll novices to his spiritual order and to guide them. He had remarked on the occasion : “His hand is like unto my own. "

Marriage

Shah Waliullah's age was only fourteen when his father got him married to the daughter of the Shah's maternal uncle Shaikh Ubaid Ullah Siddiqi of Phulat. Shah 'Abdur Rahim was pressed to postpone the marriage for the time-being but he insisted on performance of the ceremony. Subsequent events, particularly the bereavements Shah's family had to face, proved the wisdom. of Shah's father. If the marriage had been postponed once, it would have been deferred for a long time. The first son born to his wife was Shaikh Muhammad. The Shah himself schooled his son and wrote a primer for him. Later on Shaikh. Muhammad studied the Shamail Tirmidhi along with Shah 'Abdul `Aziz under the same teacher.′ Shah Muhammad migrated to Budhana after the death of his father and died there in 1208/1793. He was buried in the courtyard of the Jami Mosque of Budhana. It was because of his eldest son that the Shah was also known as Abu Muhammad Two sons of Shah Muhammad are reported by some to have been buried near him while others, claim that he was issueless. In his three letters to Shah Abu Sa'eed of Rae-Bareli, Shah 'Abdul 'Aziz has conveyed the good wishes, of his elder brother Shah Muhammad to him. These letters speak of the great regard Shah 'Abdul 'Aziz had for Shah Muharnmad.′

Second Marriage

After the death of his, first wife Shah Waliullah married Bibi Iradat the daughter of Saiyid Thana Ullah of Panipat who is reported to be a descendant of Saiyid Nasir-ud-din Shahid. Bibi Iradat was the mother of the Shah's four sons—Shah Abdul 'Aziz, Shah Rafi-ud-din, Shah 'Abdul Qadir and Shah `Abdul Ghani—who can be rightly called the four pillars of Islamic revival in India. The Shah had also a daughter Ummat-ul-'Aziz by his second wife who was married to Muhammad

Faiq b. Muhammad ʻAshiq of Phulat. Her descendants still reside in India.

Pilgrimage voyage

The Shah's journey for the pilgrimage and stay in Hijaz is a landmark of crucial importance in his subsequent intellectual and reformative endeavour. During his stay in Hijaz which extended to a period of more than a year, be equipped himself thoughtfully in a way that was scarcely possible in India. The Shah required a centre of learning, a place where the savants from every part of the Islamic world had converged for the sharpening of his wits. He undertook a deep study of the hadith in Hijaz under the most erudite scholars which later on became the cornor-stone of his revivalist campaign. His studies also helped him to equip himself in comprehending the secrets and wisdom of the shariʻah to a degree not attained by anyone during the few hundred years in the past.

The Shah was thirty years of age when he set out for the pilgrimage. The fact that he had made up his mind to go for the Hajj during a time of unsettled political conditions and lawlessness prevailing in the country and frequent piracies in high seas speaks of his courage and attachment to the sacred Mosques. The Shah also wanted to study the conditions in other Muslim countries before deciding his course of action for the defence of Islam in India. Most probably he had the Quranic instruction for acquiring knowledge—that they may witness things that are of benefit to them—in his mind for he wanted to benefit from the experiences of the learned and wise from all parts of the world converging in the centre of Islam. Surat was then the sea-port for ships sailing for Arabia but the entire route, particularly Malwa and Gujarat were hunting grounds of Maratha marauders. The great distance from the north to the south India had in those days to be covered on carts driven by bulls or camels. Indian seas were also infested by a most formidable breed of European pirates, cheifly English and Portugese, who practised fiendish cruelty on the people, men, women and children. The hardships undergone by the haj pilgrims can be seen in the few travelogues of the time that have survived. The journey within the country was no less hazardous. The Shah says that whenever anybody accompanying his party was missing during the night, he started reciting the litany of Ya Badi ul-Aja'ib for his safety. The ship boarded by the Shah took forty-five days to reach Jiddah and he reached Makkah on the 15th of Dhi Q'ada. He also started delivering lectures within the Holy Mosque, near the place allocated to the Hanafite Imam. It was a great success since the number of people who flocked to listen him was quite large.

The Shah writes in the Al-Juz-al-Latif "I had a great yearning to perform the haj during 1143/1730-31 which was accomplished by the end of that year. During the succeeding year I did homage to God at the K'aba, paid a visit to Medina, studied hadith under Shaikh Abu Tahir Madani and other scholars of the two holy cities, was bestowed a robe by Shaikh Abu Tahir Madani who perhaps combined all the different mystic orders in his person and performed the haj a second time by the end of the year. Early in 1145/1732, I was again on the move for India and I reached my home (at Delhi) safely on the 10th Rajab 1145/16th December 1732."

Mentors of the Shah

In the Insan-al Ain fi Masha'ikh al-Hannayn, written by Shah Waliullah in the memory of his teachers in the two sacred cities, he has given a bit detailed account of Shaikh Abu Tahir Muhammad b. Ibrahim al-Kurdi-al-Madani for whom he had a great regard and affection. His description of these men of learning shows that the guides on the path of spirit leave an indelible mark on the character and morals of intelligent students.

As the Shah says Shaikh Abu Tahir Muhammad al-Kurdi had first studied hadith under his own father Shaikh Ibrahim al-Kurdi, and then from Shaikh Hasan Ujaimi. Shaikh Abu Tahir also got instruction from Ahmad Nakhali and took lessons in Shamail-i-Nahawi and Musnad Imam Ahmad from Shaikh `Abdullah Basari for two months. He was permitted to transmit the ahadith contained in the works of Mullah 'Abdul Hakim of Sialkot and Shaikh 'Abdul Haq Muhaddith of Delhi by Shaikh -Abdullah of Lahore. He was also taught a quarter of Fath-ul-Bari and certain other Arabic works by Shaikh Sa’eed of Kokan.

Muhsin b. Yahya Turhati relates in the Al-Yan'i al-Janni that Shaikh Abu Tahir often remarked that Shah Waliullah was instructed by him in the recital of the ahadith, while he had himself benefited from the Shah in understanding their import. He also mentioned it in the certificate he granted to Shah Waliullah."

Shaikh Abu -Tahir was an eminent scholar of hadith, yet he was a man perfect in spirit who never relished criticism of the mystics. Shah Waliullah reports that when he sought leave of Shaikh Abu Tahir to return home, he recited a couplet, saying :

I have forgotten all other paths,
Save the one that leads to your home.

Shaikh Abu Tahir was pleased to get an almost similar reply from Shah Waliullah. Shah 'Abu' `Aziz relates that his father had replied, "Forgotten is whatever I had ever read except hadith and religious lore." Shah Waliullah's subsequent life and his engagements bear testimony to the fact that he had spoken the truth. Of the believers are men who are true to that which they covenanted with Allah.

Shaikh Abu Tahir died in Ramadhan 1145/February 1733, that is, about two months after the Shah reached his home. His father, Shaikh Ibrahim Kaur'ani was a fan of Ibn Taimiyah. always defending the latter whenever any body criticized him. Saiyid Noman Khair-ud-din Alusi writes in the Jal'a-al Aynain fi-Mahakamat-al- Ahmadain about Shaikh Kaurani.

"He belonged to the Salafi school and defended Shaikh-ul-Islam Ibn Taimiyah. Similarly, he would explain away these expressions of the mystics which apparantly alluded to in-dwelling, unity or essentiality (of human soul with God)."

The advocacy and acclamation of Shaikh-ul-Islam Ibn Taimiyah in the writings of Shah Waliullah should have come from the influence of Shaikh Abu Tahir and his father Shaikh Ibrahim Kaurani just as he is more often inclined to adopt a conciliatory attitude in several other matters like his own father.

Another scholar of hadith who certified competence of the Shah in that discipline was Shaikh Ta-j-ud-din Qala`i, the Mufti of Makkah, who had been the disciple of Shaikh 'Abdullah b. Salim of Egypt and Shaikh 'Ujaimi. He attended the lectures of Shaikh Taj-ud-din on Bukhari for three days and heard his recital of several other hadith collections.

During his stay in Hijaz the Shah received instruction in Muwatta of Yahya b. Yahya from Shaikh Muhammad Wafd Ullah. He also granted a certificate of proficieny to the Shah in the hadith compilation of his father Shaikh Muhammad b. Muhammad b. Sulaiman al-Maghribi.

The Shah had earlier attended the lectures of Shaikh Muhammad Afzal of Sialkot, the most erudite scholar of hadith in India. Shaikh Muhammad Afzal had undergone schooling under Shaikh Salim `Abdullah Basri and Shaikh 'Abdul Ahad Ibn Khwaja Muhammad Sa'eed Sarhindi, and was the lecturer in hadith in Madrasa Ghazi-ud-din

Khan at Delhi. He had also taught hadith to Mirza Mazhar Jan-i-Janan and guided him in the spiritual discipline.

The Shah was accompanied by his maternal uncle Shaikh -Ubaid Ullah of Barha and a cousin Shaikh Muhammad `Ashiq in the pilgrimage. He learnt of his mother's death at Makkah while he was on his way back to India.

Shah Waliullah was a keen student of hadith and the two holy cities offered him the best opportunity to pursue his studies there as well as to instruct others who came there for the purpose from different parts of the Islamic world. The merit of offering prayers in the two sacred Mosques and unsettled conditions in India which was gradually slipping from the hands of long established Muslim rule to the grip of a foreign power were some of the additional reasons that would have provided a justi-fication for the Shah to opt for permanent settlement in the holy land. But he decided to return to India since divine Providence had earmarked for him the glorious role of a reformer and renovator of faith in his homeland. He had in fact received an indication of his future course of action from the holy Prophet. He had the premonition: 'It is ordained by God that the Muslims would be enabled to consolidate themselves through you."

The Shah was pre-disposed to make India the centre of his intellectual and religious endeavours and wanted those closer to him to do likewise. It was the country where the earlier Muslims had worked hard to serve the cause of religion and education, had produced great scholars and saints in different eras of its history, and the country was also destined to become the centre of hadith and other religious disciplines. One of the students of the Shah was Makhdum Moin-ud-din Sindhi. When Sindhi expressed his desire to settle down in Hijaz, the Shah wrote to him :

'As regards your intention not to return to your home-land, do not take any final decision nor insist on it until you or one closer to you finds an inspiration in his heart in this matter.'

Teaching of Hadith

On his return from Hijaz, Shah Waliullah started teaching hadith in the Madrasa Rahimiyah, the school established by his father in the locality now known as Mehndiyan in old Delhi. His lectures soon attracted students from other madrasas in such large numbers that the Madrasa Rahimiyah proved insufficient accommodate all of them.

Emperor Muhammad Shah, despite his numerous faults and failings, provided a spacious building to the Shah for his madrasa in the new city, where he started teaching hadith to his students. Maulvi Bashir-ud-din writes about this madrasa.

The madrasa, occupying a spacious and imposing building, was regarded as an institution of higher learning in those days. It remained in that state until the time of Great Revolt when it was demolished and people took away its logs and doors."

He also says :

Several houses were built on its site but the place is still known as Madrasa Shah 'Abdul 'Aziz."

The reminiscences of Shah 'Abdul 'Aziz contain a reference to the masjid of the madrasa in these words:

> During the days I was born a number of persons purer of soul, who happened to be friends of my father, like Shah Muhammad 'Ashiq, Molvi Nur Muhammad and others used to reside in this masjid for prayers (duing the last ten days of Ramadhan)."

Death

At last the day came when this great huminary, who had spent every moment of his life in the service of Islam and Muslims, in the study and teaching of hadith, remembrance of God and preaching His message, left the fleeting world. Every soul will have the taste of death, be he a Prophet, a saint, a reformer or a fighter in the way of God. It was the beginning of 1176 A. H., towards the end of Muharram in that year, when the Shah left this world after a brief illness at the age of sixty-two.

Shah Waliullah died on Saturday in the afternoon of 29th Muharram 1176/21 August, 1762, as stated by Shah 'Abdul 'Aziz in his reminiscences.

"He died on 29th Muharram. The year of his death can be calculated from the chronogram Au Buwad Imam-i-Azam-i-Din (He was the great leader of religion) and Hai Dil-i-Rozgar Raft (Ah! the core of the Age has gone)."

The Shah was buried at the place called Mehndiyan to the right of Delhi gate. The place occupied by this graveyard was once the site of a hospice of Shaikh 'Abdul 'Aziz, a maternal grand-father of Shah 'Abdur

Rahim. The grave of Shaikh 'Abdul 'Aziz still exists at a little distance. Shaikh Raf'i-ud-din had taken up residence there since the ancestors of Shah Waliullah had built their houses in that locality. Shah Waliuilah had abandoned the place and moved into the city then known as Shah Jahanabad. The place was later converted into a family graveyard where Shah Waliullah, his four sons as well as his father Shah 'Abdur Rahim were buried. The tombstones give the years of their death. There are also graves of other members of his family, both men and women. Nearby is a mosque around which there are graves of a large number of saints and scholars or those related to the family of Shah Waliullah. The number of graves in this cemetery goes on increasing day by day.

Note

Shah Waliullah himself has happily given all the necessary details regarding his education, tutorship by his own father, informal education on path of spirit, journey to Hijaz and the meetings with eminent personalities in that country, albeit briefly, in his autobiography. Two more sources of his biographical details are Al-Juz-al-Latif fi-Tarjumatil `Abd-al-Zay'if and Insan-al-`Ayen fi-Masha'ikh ,al-Hararnayan. The details given here have been taken from these works as well as Anfas-al-` Arifin and Al-Qaul al-Jali.

CHAPTER-I

Outstanding reformatory services of the Shah towards the Islamic Fiqh

This chapter makes a brief mention of the reformatory services Shah Wali Allah offered to the Islamic fiqh to take it out of the ideological morass it had long been lying in, thanks to an age-old rigid concept of taqlid.

Due to reasons purely historical the practice of taqlid, originally intended to be an arrangement to serve as safeguard against uncontrollable differences of opinions in legal matters had turned into an institution of unquestioned adherence to a particular school of Fiqh and naturally there was found a strong bias against the sources, at least practically, in almost all the adherents to the schools of Islamic Fiqh. Alarmed at the deteriorating situation, the Shah decided to do something the check the ever-swelling flood of rigidity and academic stagnation. His following reformatory services not just stemmed the tide, but cast far-reaching impact on the men of Islamic learning, on both on his contenporeris and the forth coming generations.

Reconciliation between Fiqh and Hadith

The intellectual and educational circles in the Islamic world had been divided, since a long time, into two schools of fiqh and hadith, each shaping its development independently of the other.

Very often the cleavage once engendered never allowed them to close their differences. The juristic schools took note of the hadith only when they deemed it necessary to seek justification for the view held by them on a legal question, or when they had to rebut the criticism levelled against them for holding an incorrect view, or else to demonstrate the seemliness of their own juristic ruling in comparison to another school of filth. In the teaching of the Sihah, the jurisconsults normally tried to explain away the ahadith not in conformity with the views of their school or brought forth those which helped to verify the accuracy of their stand. If the classical work of any school of jurisprudence based its arguments pertaining to any legal issue on the ahadith, its followers having aptitude and competence to undertake research in hadith normally limited their studies to the examination and elucidation of the ahadith referred to in such a classical work. These were undoubtedly praiseworthy intellectual endeavours to further the cause of their own schools of filth, still they could neither be deemed as efforts to reevaluate the legal issues nor an essay at bringing out the compatibility of the filth and hadith. The different schools of jurisprudence had been converted into iron moulds which could be broken but neither bent nor expanded. Those who adhered to any particular school of jurisprudence considered their own school to be hundred per cent faultless save for some remote possibility of human error. The prevailing thought has been succinctly expressed in an.. adage which says : "Our way is primarily exact and flawless with a remote possibility of error, but those of others are basically wrong and unreceived with some prospects of validity." The result of this way of thinking was that the four juristic schools (Hanafite, Malakite, Shafe'ite and Hanbalite) which had been acknowledged since the earliest times as sects within the main body of orthodox Islam, and whose founders were undisputedly revered as pious and saintly souls, were drifting apart with the passage of time and their differences were degenerating into public debates which often turned into brawls and violent clashes. Even worse was the lot of those scholars who left any juristic school to follow the hadith in devotions according to their own understanding. Shaikh Muhammad Fakhir Za'ir (1120-11641/1611-1654) of Allahabad had to face popular resentment since, as some scholars assert, he dared follow the non-conformist path of the Ahl-i-Hadith.

A significant achievement of the Shah which constituted a part of his endeavour for the regeneration of Islam as well as propagation of the hadith and restoration of the Prophet's sunnah was to establish the rapport between the hadith and figh in order to combine and reconcile the four juristic schools. His efforts in this direction were in fulfilment of the inspiration claimed to have been received by him from the holy Prophet that God would bless his efforts for the consolidation of the Muslims in a particular way.

So far as Indian sub-continent is concerned, no effort seems to have ever been made earlier in this direction. The absence of any such attempt is explained by the peculiar historical and literary developments in this country. India had remained, ever since the advent of Islam in this country, under the Turk or Afghan suzerains. Both these races had not only been Hanafites from the time of their conversion to Islam but also its zealous supporters.

The Malikites and Hanbalites were unable to gain an entry into India for about eight hundred years. Shafe'ite school remained some adherents in the southern coastal regions, but it remained confined to certain parts of Madras, Karnataka, Bhatkal and Kerala. Only Malabar had a preponderance of Shafeite school since a number of scholars, mystics and merchants belonging to that school had settled there after emigration from other countries. It could also not produce scholars and traditionists, save a few like Shaikh Makhdom. Faqih 'Ali Mahayami (d 835/1432), the author of the Tafsir Tabsir-al-Rahman and Taisir-al-Mannan, Shaikh Makhdom Ismail Faqila al-Sakkari al-Siddiqi (d. 949/1542) and Makhdum Shaikh Zain-ud-din (d. 928/1522), who could have exerted an influence on the intellectual circles of the northern India, or obliged the Hanafite scholars to study the Shafe'ite system of jurisprudence. Even those scholars of India who happened to undertake a journey to Hijaz for the study of hadith, preferred to receive education from the Hanafite scholars, mostly those who had migrated there from India or Afghanstan. Hijaz was then included in the Turkish dominion whose dominant juristic school was Hanafite since the Turks also belonged to that school. Shah Waliullah was the first scholar from India whose chief tutor was the great Shafe'ite scholar Shaikh Abu Tahir Kurdi Madani. Shaikh Abu Tahir left a lasting impression on the Shah because of his depth of knowledge, personal charm, spiritual perfection and breadth of vision. The Shah has spoken of his tutors in Hijaz in the Insan al-ayn. They include Shaikh Taj-ud-din Qala'i who was a Hanafite scholar of hadith but his another mentor Shaikh Muhammad Wafd Ullah b. Shaikh Muhammad b. Muhammad b Sulaiman was a Malakite. During the time the Shah remained in Hijaz the leading scholars and teachers, particularly those of hadith originally belonged to Yemen or Kurdistan who were mostly Shafeite’s All these factors contributed to acquaint the Shah with jurisprudence and distinctive features of the Shafe'ite school. Similarly, he got an opportunity to make himself informed of the Malikite and Hanbalite systems which had not been available to any earlier Indian scholar owing to geographical, political, and cultural reasons. This made a comparative study of the different juristic schools easier for the Shah in comparison to his predecessors. The Shah left for Hijaz in 1143/1730, when he was 30 years of age, after spending 12 years in the profession of teaching. He was, however, gifted with a bent of mind pre-disposed to an undogmatic attitude and reconcilation of differences, aptly expressed by the mystic Rumi in one of his couplets:

You have come to bring communion,

And not to make separation.

He had already made up his mind to strive for bringing about a greater conformity between the hadith and the fiqh and it was for this reason that he had started giving preference to the juristic opinions of the hadith scholars over those of different schools of jurisprudence. He had written in Al-Juz al-Latif fi-Tarjumata al-'Abd Zaief

An study of the four juristic schools and their principles of jurisprudence as well as the ahadith on which they base their arguments has led me to prefer the juristic findings of the hadith scholars. This inclination was backed by divine influence. Thereafter, I was seized with a longing to make the pilgrimage to the two sacred Mosques."

The Shah disliked the approach of narrow-minded followers of the different juristic schools (who never allowed even the least deviation from their stand) as well as the Zahiriyah sect (which rejected the filth and denounced the founders of juristic schools despite their depth of learning and piety). He criticized both these groups decrying them as extremists and guilty of immoderation. He held that the 'truth was in-between' : neither the former were absolutely correct nor the latter. In the Hujjat Allah al-Baligha he writes : The basis for juristic deduction, on the one hand, and following the hadith literally, on the other, are both grounded in true religion and scholars have at all times acted in accordance with both these principles It is only that some have attached a bit more importance to the deductive approach than to the literal adherence of the hadith while others have taken a contrary course. It is not at all proper to ignore either of these principles to which commonality of both the groups is accustomed. The right course in this matter lies in bringing about a reconciliation between the two so that what is wanting in one is made up by the other. This was the view held by Imam Hasan Basri " The Shah also writes in his Wasiyat Namah :

"Scholars who are well-versed both in the fiqh and hadith should be followed in petty matters, but the majorjuristic issues should be constantly checked with the Book of God and hadith of the Prophet (peace be upon him)."

Again he says :

"It is necessary for the Muslims to keep on correlating the rulings based on analogical deduction with the Qur'an and the hadith for they can never afford to be unmindful of it." The Shah had been mentally and educationally groomed in an atmosphere pervaded by the Hanafite school of jurisprudence and therefore he was conversant as well as appreciated the distinctive features of that school like any other scholar belonging to it. He acknowledged its merits and wrote on different occasions that owing to various historical, intellectual, political and cultural developments the Hanafite (as well as Shafeite) fiqh had come to receive greater attention, it was more polished and had a unified sequence, more commentaries on it were written and better exposition of its principles was made then could be claimed for any other juristic system. He wrote about Imam Abu Hanifa :

"Imam Abu Hanifa occupied a very high place in the ijtihad (interpretation) and istanbat (application)) of law adopted by the school of jurists like Ibrahim. Nakha'i and other equally eminent scholars. In his interpretations he has shown a deep insight in bringing out the rationale and reasons for his legal opinions. He took keen interest in working out the details of specific juristic issues."

At the same time, the Shah held Imam Malik in the highest regard and considered his Muwatta as one of the most authentic collections of hadith, which was in his view an indispensable work on the subject.

On the other hand he paid tribute to the thoroughness and clarity of the Shafe'ite school, held it as nearest to hadith and acknowledged the perspicacity of Imam Shafe'i.

In regard to Ahmad ibn Hanbal, the Shah writes in the Hujjat Allah al-Baligha:

"Among these jurists and traditionists, the one most eminent, outstanding in his knowledge of hadith and having a deep insight in juristic matters was Imam Ahmad ibn Hanbal while Is'haq b. Rahuyah occupied the place next to him "

The Shah had cultivated a moderate and balanced view by going through the works and biographies of the founders of all the four juristic schools which had made him realise their deep knowledge and vision in religion as well as the great services they had rendered to the Muslims. This could not be expected from the scholars who had remained attached to a particular school and were unable, for various reasons, to step beyond the limits of their own juristic school.

The Moderate View

A distinguishing feature of Shah Waliullah's revivalist endeavour which was the result of his instinctive perception, was the moderate and balanced approach he had adopted in regard to ijtihad (individual reasoning) and taqlid (the unquestioning acceptance of the rulings of earlier jurists of one's own school). The Shah's approach in this matter showed his strong common-sense, realism and discernment. On the one hand, there were scholars who deemed it incumbent on all Muslims, whether a scholar or a commoner, to follow the Qur'an and Sunnah and to derive legal rulings directly from these sources. They considered taqlid to be forbidden. This way of thought, though not explicitly spelt out by them, is the logical conclusion of the views expressed in the writings of the scholars of this school, headed by 'Allama Ibn Hazm among the earlier academicians. But this was impracticable since it was beyond the competence of every Muslim to exercise individual reasoning in legal matters.

On the other hand, there were those who considered taqlid obligatory for every Muslim and held the opinion that the least deviation from it amounted to waywardness and errancy almost in the same way as the former group deprecated taql-id of any particular school of jurisprudence. Those who favoured taqlid closed their eyes to the fact that the adoption of any particular juristic school was just a means to keep the common people away from following their own whims and personal predilections, to protect the Muslim society from confusion and anarchy, to bring about orderliness and uniformity in religious observances and, finally, to make it easier for the common people to abide by the injunctions of the shari’ah. But they took the means for the end and insisted on it so dogmatically that the entire issue which pertained to legal methodology was ossified as if it were an article of faith, abiding and immutable.

The viewpoint of the Shah in this regard was nearer to the spirit of shari’ah. He drew inspiration from the practice followed in the earliest era of Islam which showed greater practical sense and feasibility since it met the demands of human life and psyche. In a chapter dealing with the practice followed by the people upto fourth century A.H. and thereafter in the investigation and scrutiny of religious issues he has given in the Hujjat Allah al-Baligha a detailed account of the method of legal inquiry of those times.

Legitimacy of Taqlid

Taking a reasonable, detached and realistic view in the matter, the Shah considered taqlid justified for the man who followed a particular juristic school or one of the great jurists in order to give allegiance to the holy Prophet and his Shari'ah, in case he found himself incompetent to discover religious injunctions or what was attested by the Book and the sunnah. There can be several reasons for taqlid, said Shah Waliullah. One may be illiterate, or may not have the leisure to engage in study and enquiry, or may lack the resources to discover the directives, or else to draw any inference from them. In this connexion the Shah has cited Ibn Hazm's view-point that taqlid is forbidden since it is not permissible for any Muslim to accept the statement of anyone save the Prophet without adequate reason. Thereafter he writes :

"What ibn Hazm says will not hold good for a man who does not give allegiance to anyone save the Prophet (on whom be peace): for, he considers permissible and forbidden only what has been allowed and prohibited by Allah and His Apostle. But, as he has not directly received knowledge about the sayings and doings of the Prophet (on whom be peace), nor he has the ability to reconcile such reports and draw inferences from them, he merely relies on a pious and God-fearing scholar with the confidence that the scholar is only an exponent and commentator of the Prophet's sunnah. How can this man be blamed if he discards the scholar the moment he comes to know that his earlier estimate was not correct ? How can such a man be deemed as opposed to the sunnah and the shari'ah ? "Everybody knows that questions have been asked and juristic opinions given ever since the time of the Prophet (on whom be peace). It hardly matters whether a man always consults one jurisconsult or different jurists on different occasions. How can this be deemed as unlawful if the intention of this man is seemly and he sincerely desires to abide by the injunctions of the shari‘ah ? Since we do not maintain that Allah has sent down His Law from the heavens to any jurisconsult or that the jurisconsult is immaculate and obedience to him is a must for us, adherence to such jurist and preceptor is merely because we consider him to be a scholar of the Qur'an and sunnah of the Prophet (on whom be peace). Whatever advice is given by such an scholar will either be based on a clear directive of the Qur'an and the sunnah or derived from these in accordance with the principles laid down for it. He may, however, be led to believe, in all sincerity, that a certain matter is based on a given stipulation found in the Book or the sunnah, although his view may not be correct. In this case the jurist will be said to have unintentionally made a wrong analogical deduction, even though he may maintain that his opinion is based on what the Prophet (on whom be peace) has said about the stipulation necessary for taking that view. In the circumstances, his analogical deduction can be attributed to the directive of the Prophet (on whom be peace) as understood by him. Had this not been an accepted rule, nobody would have ever followed any jurist. But if we come to know of an authentic hadith with reliable chain of narrators contradicting the legal opinion of that jurist or imam, and we reject the hadith by giving preference to the analogical deduction of the jurist, then who would be a greater wrongdoer than us and what would be our excuse when we shall tomorrow be facing God."

Characteristics of the Four Juristic Schools

With this sharp and judicious analysis of taqlid, the Shah also throws light on the wisdom of following the four juristic schools by a great majority of Muslims all over the world in a slim but valuable tract entitled 'Iqd al- Jid fi Ahkam al-ijtihad wal-Taqlid He says :

"Remember that there is a great security in following the four juristic schools while a great risk is involved in rejecting them. There are several reasons for it. First, the Muslims have always been agreed upon reposing confidence on the earliest generation of Muslims in the matter of ascertaining the rules of shari'ah. The successors of the companions relied on their predecessors, those who came after them on the earlier generations and so on. The scholars in all ages have reposed trust in their forerunners. Reason also commends this course for the two sources of knowledge of shari'rah are its transmission and drawing inferences. Transmission is possible only when the later generation is willing to learn from its predecessor. For drawing an inference it is equally necessary that the views of the earlier generations should be known so that any conclusion drawn does not go beyond the sphere of its frame of reference and thus contravene the consensus of the Muslim community on any issue. Hence it is essential to rely and seek help of our forerunners. This is correct of all other branches of learning, arts and crafts, since these can be learnt only from and keeping company of their instructors. It seldom happens that one can acquire expertise without following this course; one can argue that this is possible, but actually it never happens.

"Now that it is established that to repose trust in the findings and dictums of our forbears is essential, it becomes necessary that the sayings on which we have to rely have been transmitted through reliable sources they have been included in well-known compilations; have been duly examined and analysed in a way that those to be given precedence over others are clearly spelt out; those commonly accepted are sifted from others approved only by a few; the source of a directive is known ; its exact implication is ascertainable; different sayings are capable of being reconciled and the rationale of injunctions is also explicit. Any juristic school and its juristic opinions lacking these conditions cannot be relied upon. There is not a single school of law formulated in the ages gone by, save these four schools, which fulfils all these conditions."

The Shah adopted the course of moderation between ijtihad and taqlid which chimed with the objectives of the shari'ah, human psychology and the realities of life. He approved of taqlid on the conditions that intention was seemly and proper and one was clear in his mind about emulating the Prophet (on whom be peace) and following the injunctions of the Qur'an and the sunnah. He permitted dependence on an scholar solely on the ground of one's confidence in his being an exponent and interpreter of shari'ah by virtue of his being learned in the Qur'an and the sunnah. Such reliance was also to be accompanied by a willingness to discard a scholar in case the trust reposed in him proved to be misplaced. He held that a believer should not have the least hesitation in accepting a directive contained in a hadith if the opinion of the jurist was found to differ from it.

"But nay, by thy Sustainer ! They do not (really) believe unless they make thee (O Prophet) a judge of all on which they disagree among themselves, and then find in their hearts no bar to an acceptance of thy decision and give themselves up (to it) in utter self-surrender."

Necessity of Ijtihad

Shah Waliullah considered ijtihad (interpretation or discovery of law from its sources within the frame-work and in accordance with the methodology laid down for such an exercise) essential for every age in order to meet the changing social needs of the time even though he acknowledged the distinguishing features of the four schools of Islamic law, paid tribute to the greatness as well as the services rendered by the earliest traditionist-jurists and recommended to make full use of their scholarly findings. He declared that to ignore these schools was fraught with danger and was also harmful for the community. At the same time, he also pleaded that ijtihad was but a natural outcome of the changes brought about by the march of time and hence necessary for not only the expansion of the Islamic law but also for the guidance of mankind in accordance with the divine revelation. In his view it was the duty of religious scholars to exert themselves for ijtihad in all times to come. In his introduction to Musaffa, he writes :

"Ijtihad is a *fard bil kifayah* in every age.

The Ijtihad. I am speaking of here does not mean that it should be of the same calibre as that of Imam Shafei who was second to none in his knowledge of the canons for reception and rejection of hadith, Arabic grammar and syntax etc., and who never had to depend on any one in legal interpretation or drawing an inference. I mean here the affiliated Willed which signifies finding out the injunctions of the shari'ah from the original sources and interpreting and drawing inferences on the lines indicated by the great jurists, irrespectives of the school followed for the purpose.

"And when we say that ijtihad is incumbent during the present times (and there is a consensus among scholars on this point), it is because new issues crop up rapidly and they cannot be encompassed beforehand. It is essential to know the command of God about such matters, for what has already been written or compiled on the subject may be insufficient or likely to give rise to controvercies. Such issues cannot be solved without reexamining the arguments given therefor. Certain rulings handed down from the great jurists are also intersected and cannot be fully relied upon. Therefore, these matters cannot be solved unless the issues are reexamined in accordance with the methodology laid down for legal reasoning and a fresh examination of the issues."

CHAPTER-II

People's estimation of the Shah as mujtahid-e-muntasab

In addition to the views just mentioned there, there are many noted men of Islamic scholarship who described him as Imam, though in our common parlance the use of such terms is not essentially intended to cover all of their technical connotations in the strict sense of the words. Such expressions are rather used to recognize the wide-ranging religious services of such epoch-making and revolutionary persons of the Islamic history who exerted great ideological influence on a greater part of the Ummah through their achievements in different areas of Islamic scholarship. There are of course more than one great Muslim scholars who regard the Shah as mujtahid in the technical sense of this juristic term and see his great services towards the Islamic learning from the same angle of vision. The scholars of the Arab world who have lately edited al-Musawwa, the Shah's celebrated commentary on al-Muatta of Imam Malik and got it published from Darul-kutubil Ilmiya, Beirut, have declared him the *mujtahid mutlaq muntasib* in their brief prefatory note to both the book and his personality. Nevertheless, those Arab scholars have associated his *intisaab* to both the Hanafi and Shafie schools. The reason, according to their view, being that his teaching and learning services included both the schools. One more reason is that the Shah has conducted a very realistic comparison between the contrastive juristic opinions of the earlier mujtahidin.

This Concept actually takes its base from those texual expressions of the Shah in which he associates his juristic ideology with the methodology of ijtihaad and ideology of those traditionists who were gifted with high juristic acumen and kept both the *ahadith* and the juristic interpretations before them and put them to the test of the Qur'an and Sunnah, the only primary sources and bases for all the commands of the Shariah. This methodology of juristic interpretations has been held preferable by the Shah. After an exhaustively detailed critical evaluation of the viewpoints and methologies of both the Ahlul-Hadith and of Ahlur-Rai in his magnum opus Hujjatullalul-Baaligha, he has decisively written that on a moderate and truth-seeking scholar of Islamic jurisprudence it was incumbent-to reconcile both viewpoints and benefit from both the methologies and the ways of thinking.

In his autobiography, *al-Juzul-Lalif fi Tarjimatil Abdil-Zaif,* he has reaffirmed his same viewpoint in the following words:

"After studying deeply the principles of jurisprudence of the four schools and the foundations of their argumentations my disposition got inclined to the methodology of those jurisprudents who combine it with hadith. My this inclination received support from the Unseen as well. After adopting this approach a deep enthusiasm to visit the Haramain Muhtaramain(the two great Masjids of Makkah and Madinah) developed in me."

(p.203, 204 Quoted from the edition of his biography combined with Anfasul-Arifin)

In his testamentary advice, written in Persian language, he laid emphasis on the same thing. To quote his words.

"In the detailed juristic issues the Ulama to be followed are those who have combined both the jurisprudence and hadith in their scholarship; and the juristic problems solved through analogical reasoning must always be put to the Book of Allah and the hadith of His Messenger (peace be upon him) for verification."

He further says:

"The Ummah is never independent of putting the juristic deductions to the test of the Book and the Sunnah and hadith of the Messenger."

(Abul Hasan Ali Nadvi: Tarike Dawat-o-Azimat Vol. 5 P 202-3)

In his celebrated book Iqdul Jeed fi Ahkamil-Ijtihaad wat-Taqlid the Shah has elaborately discussed the definition, conditions and the range of the juristic services of the *mujtahid mutlaq muntasib*. To reproduce the gist of the long discussion in his own words:

"The long and short of it is that he (mujtahid mutlaq muntasib) must combine in himself the knowledge of hadith, Fiqh, transmitted from the principal men of jurisprudence, and the knowledge of the principles of jurisprudence, much the same as have been the great men of the Shafie school. According to our inductive reasoning the most outstanding feature of this methodology is that the juristic interpretations received from ther earlier great jurists, that is, Imam, Malik, Shafie, Abu Hanifa, Thori and the mujtahids of the rank whose schools of jurisprudence generally met a wider reception on the part of the Ummah, should be put for verification to the authentic books of hadith like Mu'atta of Malik, Bukhari, Muslim,Tirmizi, Abu Dawood, etc. The deductions and interpretations consonant with the ahadith clearly or impliedly, should be accepted ; those clearly contradicting with the ahadith should be rejected outright. In case of a disagreement in the ahadith analogical reasoning should be applied to bring harmony between the ahadith and the juristic interpretations."

According to the Shah Sunnan Baihaqi, Ma'alim al-Sunnan and al-Baghwi's Sherh al-Sunnah offer the best example of this research methodology and analogical reasoning. He further says:

"This being the way of the first-rate-scholars out of the legist traditionalists, though such people are extremely rare. They are other than those literalist-traditionists, who do not admit of the concepts of analogical reasoning and consensus. Likewise, they are other than those earlier traditionists who cared little for the juristic interpretations worked out and advanced by the mujtahidin. Still, they are comparatively more akin to the hadith scholars.

For they critically analysed and evaluated the juristic interpretations of the mujtahidin as they did with the interpretations of the Companions and the Followers."

Such are the writings of the Shah which form the basis for building such concepts about him and his services towards the knowledge and legacy of Islam. Some out of those holding him as mujtahid mutlaq muntasib have referred to the same methodology of research adopted by the Shah. This makes us believe that this estimation of the people about the Shah is priomarily based on such writings scattered about the books of Haz. Shah Wali Allah. For example, we are citing here the words of Shaikh Abdul Hai, the noted historian of the past century.

"The Shah dived deep into all the four schools of Islamic jurisprudence and the principles of Fiqh and conducted a through study of the ahadith constituting the source material for their juristic interpretations and legal rulings. (Al - Ilam biman fil-Hind min al Alaam, Vol 6,P.411, Rai Bareili Edition)

"And with help of the light from the unseen, he chose for himself from all such ways the methodology of the jurist traditionists."

The author further writes :

"Allah cast in his heart the way to combine the fiqh with hadith." (op.cit)

Casting light on Shah Wali Allah's juristic approach the group of the ulama woking on al- Musawwa has written:

"His juristic methodology is marked by moderation and temperance and combining the properly proved ahadith and athaar with proper reasoning between the methologies of the jurists and the muhaddithin." (al-Musawwah, commentary on al-Mu'atta, P. 8)

The author of Hayat Wali (a biography of Haz. Shah Wali Allah) did not discuss the Shah's juristic methodology, yet at a place in his book he has cited much the same statement of the Shah with reference to al-Juzul-Latif in the following words. "Finally, I turned satisfied with the methodology of the jurist-traditionists and I adopted it." (Hayat Wali P. 422)

However, in accepting this opinion we face a lot of problems. The major problem arises from the most typical position of the case. The people belonging to this specific class are extremely rare in the entire Islamic history. To be credited with such a position of higher rank a person needs to have extraordinary work on fiqh and its principles and *fatawa* and wide ranging services to his credit. Undeniably, the services of the Shah towards the overall Islamic scholarship are unequalled covering a wide variety of subjects: his genius and the renovative character of his work and its distinctiveness is acceptable without any reservation. Still, in spite of all that his work in the area of fiqh, principles of fiqh and fatawa is too short, primarily of rudimentary character. It is not so detailed, deep and wide, both in quantity and quality, as to attract the title of this higher rank for him. As regards the Shah himself, he has a fuller perception of the greatness and delicacy of this position. He is fully aware of the fact that throughout the long history of the Ummah this grade has been assigned only to fewer men of Islamic scholarship. Making mention of some very exceptional ulama of the Shafie school for the illustration of his opinion he has himself written.

"Though the people of this grade are seemingly numerous, yet in reality, considering all other related facts, the number of such people is scanty indeed. (Iqdul Jeed, P. 40)

Towards the end of this discussion he makes mention of the *fuqaha-muhaddithin* like Baihaqi and Baghwi and says:

"Fewer they are indeed."

His constant and repeated reminding the people of the extraordinary importance of the position of interpretation amply speaks of the fact that he regards it extremely delicate and critical and about his own self is completely free from making any claim or feeling any right to the office of the kind. As it is evident from all of his writings, the Shah shows no type of undue modesty or humility as he has clearly expressed himself and has shed light on the value and nature and position of his works and religious services. Examples follow:

“When I completed the task of exposing the secrets of the teachings of Islam and unveiling the rationale of the commands and prohibitions of the Shari’ah, Allah ta’ala invested me with the robe of renovation whereby I turned able to reconcile the juristic differences.” (Tafhimat-e-Ilahiyah)

Allah ta’ala has bestowed on me the honour of the renovator of the religion, Wasi and qutb of my age. If Allah writing, my endeavours will bring new life to the wretched muslim Ummah.” (Zafarul-Muhassilin P. 57, with reference to Tafhinaat)

The office of the religious renovation is that the renovator undertakes the task of interpreting the commands of the Shariah and the legal system of Islam strictly in accordance with the book of Allah and the Sunnah of His Messenger without subjecting it to analogy. In carrying out the task he makes a fuller use of the oral and practical interpretations transmitted to us from the Companions and their immediate followers.

As regards the position of *Wasi*, the *Wasi* arranges commands and the prohibitions in lines with the Best Model of the Messenger and his sayings.

As of the Qutb, his task is to reveal to mankind the ways of pleasing Allah in his contemporary set of requirements and circumstances.

From among the special favours of Allah on me is that He has made me the leader, wise and the interpreter of His will in this last age. (Tafhimate)

“In my mind it has been cast by Allah that I should communicate this fact to the people that the present age is of mine, this time belongs to me, unfortunate indeed being the person who refused to come under my banner.”(Op. cit.)

“I had a dream that I had been given the position of Qaimuz Za,ama, That is, I’m a tool in the hand of Allah to carry out His will of bringing a good system to the world in the present age.”

(Fuyuzul-Haramain)

CHAPTER-III

A brief descriptive survey of Haz. Shah Wali Allah's epoch-making achievements and great reformative services to the overall academic enterprise of his contemporary world of Islam and of the influence he exerted on subsequent Muslim generations

Shah Wali Allah lived at a time when the decline of the political power of Muslims in the Subcontinent had reached alarming proportions. Shah Wali Allah was fully aware of this and had given much thought to it. In his assessment, the following two facts were vital for understanding the predicament of the Indian Muslims in his time :

1. Muslims seemed to be heading towards disintegration because the factors which had earlier created a reasonable degree of inner cohesion and solidarity among them were falling apart.
2. Muslim intellectuals were becoming impoverished as a result of the decay of Islamic education and Islamic scholarly tradition.

   Keeping in his view these two factors, the long-term strategy of reform Shah Wali Allah pursued for the resurgence of religious consciousness and. Intellectual development of Muslim community consisted mainly of seven important corrective measures that he proposed and applied with full vigour :

   1. The foremost thrust of his reform aimed at a return to the pristine purity of Islam by vigorously linking Muslim scholarly tradition with the Qur'an and the *sunnah* . He made almost the first ever attempt to a lucid translation of the Qur'an into lucid Persian – the *lingua franca* of the Muslims of the Subcontinent. He thereby sought to disseminate the message of the Qur'an among the rank and file of the Muslim community instead of keeping it confined to the academic concerns of specialists. He also initiated a new tradition in the teaching and learning of *Hadith*. In this field of Islamic scholarship, which Shah Wali Allah rightly

reckoned as the fountainhead of all authentic Islamic knowledge and practice, he added the horizontal to its vertical dimension. For while the former consisted of an assimilative, integral and total approach to the understanding of the Prophet's mission, the latter approach was a somewhat reductionist approach to the study of the Prophet's traditions, taking each one of them as a single unit of religious knowledge and instruction, without necessarily attempting to look at matters from the perspective of the totality of the Prophets teachings. Further, Shah Wali Allah emphasized the core of the actual message contained in the *ahadith* of the Prophet (Peace be upon him) along with the examination of the authenticity of the text of the traditions, taking a critical note of its linguistics, its semantics and the credibility of its transmitters.

2. Shah Wali Allah was perhaps the first exponent of Islam who clearly asserted that discerning the deeper and subtler layers of meaning and lavels of message underlying the Prophet's traditions constituted the 'kernel' of the *Hadith*, while all the discussions relating to the transmission and hermeneutics of their texts were merely its 'Peel'. The former was termed by him as *'ilm asrar al-din* (the science of the subtle meanings of religion'). To implement this idea of shifting the focus in the *Hadith* sciences, he wrote a number of commentaries on the major compendia of *Hadith*, especially *Bukhari's al-Sahih* and Malik's *Muwatta'*.

3. Shah Wali Allah made an earnest effort to introduce a holistic approach to the understanding of Islam by reconciling the apparently divergent insights provided by spiritual, rational and initiutive points of view into a unified vision of the reality. He thus tried to show a complementarity and concord between the points of view that had been seen in the past as exclusive approaches and had set their votaries unneccessarily apart. At the same time, he employed his masterly skills in synthesizing the views of the so-called traditionalists and rationalists in their interpretation of Islamic belief and praxis. He wrote a number of treatises to highlight the methodology of arriving at the underlying unity in the apparent diversity of individual opinions.

4. Shah Wali Allah tried to link his understanding and exposition of Islam with the practical problems of his milieu. In this regard, he pleadedto shift the focus of the academics from speculative, theorotical and abstract issues occupying a large space in the Muslim academic tradition to the concrete problems relating to the current existential conditions of the community. The best specimens of his writings that reflect this trust of his thought are his epistles that he sepcifically addressed to people of note representing different strata of the Indian Muslim community-rulers, scholars, preachers, and sufis.

5. Shah Wali Allah also tried to deal a powerful blow to the influence of the divisive and conflictual approaches that had been increasingly surfacing in the Muslim academic tradition and absorbed the attention of large numbers of Muslims. He developed a methodology of his own in dealing with the variant points of view that constituted the dividing lines between various legal and theological schools, religious sects and spiritual orders. He thereby attempted to demonstrate that the apparent differences of opinion were traceable to an essential unity of purpose and a common vision of life rooted in the Qur'an and the *sunnah*. He tried to understand the 'intent of the law-giver' in prescribing particular edicts in specific contexts. Once the central objective was clear, the differences of opinion arising out of the temporal human understanding of those edicts were naturally relegated to the periphery. In this way, Shah Wali Allah brought the emphasis back from te minor points of variation to those central and substantive elements in the corpus of Islamic edicts that supplied the much-needed unifying factor for the religious and cultural cohesion of the community.

6. He developed a new approach in understanding and interpreting the texts of the Qur'an and the *sunnah* by probing into the socio-economic, political and psychological conditions prevailing in the Arabian society at the time. He thought that without taking into consideration these particular circumstances, it would not be possible to determine the true signification of these texts. In this way, Shah Wali Allah tried to moderate the accumulative effects

of the past leteralism in comprehending the religious texts and applying them to the changing conditions of human life. In this regard, he clearly distinguished between the constants and the variables in the body of commands furnished by the Qur'an and the *sunnah*. Moreover, Shah Wali Allah not only extensively practiced the modes of *ijtihad* himself, but also vehemently pleaded for its operationalization wherever it was warranted by the changed circumstances. In fact as Marcia Hermansen, a contemporary authority on Shah Wali Allah, has rightly remarked that the innovations in the Islamic thinking of this great thinker provide another evidence of the continuity in the functioning of *ijtihad* as a principle of movement in the structure of Islam.

7. Shah Wali Allah also attempted to orient the Muslim scholarly tradition to establishing a channel of communication with non-Muslims. He did this by developing a new scholastic tradition in '*Ilm al-kalam*' which relied more on inductive logic than on the deductive methods of thinking. Inspired by one of his spiritual visions, he had prophesied that "the law of Muhammad would shine forth in this age by being presented in long and loose-fitting robes of demonstrative proof". In this way, the discourse of Islamic thought initiated by Shah Wali Allah and later developed by his descendants and disciples was made progressively more comprehensible to non-Muslims. This was because it was anchored in the dialectics that were based on commonly acceptable premises. By introducing this particular element in Islamic thought, Shah Wali Alla could rightly be regarded as the precursor of a reformist scholastic tradition in Islamic thought.

The most important reason which could perhaps explain the singular success achieved by Shah Wali Allah – a success that appears almost without parallel in recent times- was that he adopted a highly effective and persuasive channel of communication. This was typically represented by the spiritual methods of reform and modes of human transformation employed by the sufi masters. In this way, Shah Wali Allah made a direct appeal to the heart and did not confine his effort to mere intellectual articulation of his views. His authorship of around forty seminal works coupled with his teaching of hundreds of gifted persons was greatly reinvigorated by the supereimposing role of almost all the living spiritual orders of his time. Last, but not the least, God's Grace must have touched the sincere soul of Shah Wali Allah with special support and blessing, and that is a major factor in every true seccess, both here and hereafter.

CHAPTER-IV

A realistic assessment of the Shah as a Faqih, the Intellectual and Academician

The true greatness of Shah Wali Allah lies not so much in his role as a political seer and social reformer, but in his lasting academic work. He perfected the scheme initiated by Shah `Abd al-Rahim and Shaikh Abu'L-Riza Muhammad. Their efforts in the intellectual field were directed towards evolving a common tradition that could be adopted with equal ease by the Muslim philosopher, sufi, mutakallin (theologian), and jurist. They attempted to reconcile intuition, intellect, and revelation, so that a true, holistic Islamic outlook could emerge. Their legacy was enriched when Shah Wali Allah came into contact with Shaykh Abu Tahir al-Kurdi in Arabia; the Shaykh's approach to matters of the intellect was akin to that of Shah `Abd al-Rahim. Both of them also traced their intellectual lineage to the celebrated philosopher, Jalal al-Din al-Dawwani.

Shah Wali Allah belonged to the Hanafi school of fiqh, as did his forefathers. Shaykh Abu Tahir al-Kurdi, however, was a Shafi'i. This led Shah Wali Allah to treat the Hanafi and Shafi'i schools of fiqh with about the same degree of deference. Although in his home country he chose to follow the Hanafi school as far as practicable, he did not altogether dismiss the Shafi'i school. He based his study Of Hanafi fiqh on the works of al-Shaybani, and that of Shafi'i fiqh directly on the works of al-Shafi'i. Noting that both al-Shaybani and al-Shafi`i had derived their fiqh from Malik ibn Anas, Shah Wali Allah concluded that Malik's Muwatta' was the basis of all fiqh, and that all the fiqhi doctrines of the four Sunni schools had developed from the same roots. Since the Muwatta' had been compiled in Madinah, it represented the epitome of the juristic tradition of Madinah. This juristic tradition could be traced back to 'Umar ibn al-Khattab. As such, Shah Wali Allah considered these four schools to be a commentary on the juristic approach of Umar. Hence his assertion in his Izalat el-Khafa that `Umar was the absolute mujtahid (al-mujtahid al-mutlaq), while the three imams, in their relationship to `Umar, were no more than mujtahid muntasib.'

Apart from combining the schools of figh, the Shah also succeeded in combining the shariah and the tariqah, a process initiated by the Mujaddid and maintained, among others, by Shah Wali Allah's father. Shah `Abd al-Rahim's approach to controversial problems was purely academic; his main consideration was to minimize the fiqhi disagreements and reconcile conflicting points of view. Shah Wali Allah also tried to bring about reconciliation between the different sufi orders in South Asia by minimizing their differences. In his person, he combined the four major sufi orders of the day, accepting allegiance (bay`ab) in the Qadiriyyah, Naqshbandiyyah, Chishtiyiah, and Suhrawardiyyah orders. However, as noted above, his intellectual and academic achievements eclipsed his mystic and spiritual attainments.

With his immense intellectual standing, Shah Wali Allah was well equipped to embark upon the gigantic task of the reconstruction of the Islamic sciences. He had greatly benefited from the lectures on Qur'an delivered by his father. He considers these lectures to be one of the major blessings God had bestowed upon him.

I had several occasions to study the Holy Qur'an at the feet of my father with deep reflection on its meanings, explanation of the occasions on which relevant verses or surahs were revealed, and with research in the exegeses and commentaries. With the help of this study, a great portal of knowledge and comprehension of the Truth was opened for me.

Shah Wali Allah continued this tradition and made the Qur'an the basis of his entire academic work. Apart from popularizing the translation of the Holy Qur'an among the intelligentsia, he also attempted to facilitate its understanding and interpretation. His book, al-Fawz al-Kabir fi Usul al-Tafsir, outlined the principles to be followed in the interpretation of the Qur'an. In Fath al-Khabir too he discussed some problems of interpretation. This was the best way to acquaint the common man with the Holy Book, the main source of all Islamic teachings. Direct acquaintance with the Qur'an and the Sunnah has the potential to divert attention from trivial theological and doctrinal differences to the fundamentals of religion. Muslims in South Asia have traditionally tended to derive guidance relating to religious matters from scholars of a relatively later period rather than directly from the Qur'an and the Sunnah of the Prophet (peace be upon him). This attitude had contributed to widening the gap between various sects. Furthermore, the fuqaha' concentrated mainly on the verses which contain commandments (ayat al-ahkam); their relative disregard of the rest of the Qur'an played a considerable role in the popular negligence of a direct study of the Holy Book.

To make a break with this tradition, Shah Walil Allah translated the Holy Qur'an into Persian, the language of culture, education, and administration in Mughal India. The translation was completed in Ramadan 1151 AH/1738 and included in the curriculum of Madrasah-'i Rahimiyyah in 1156 AH/1743. Wali Allah also appended short explanatory notes in the margins.

Next to the Qur'an, the Hadith and Sunnah of the Holy Prophet (peace be upon him) were the most important sources of Islamic teachings. Although celebrities like Imam Hasan Saghani and Shaikh 'Abd Al-Haq Muhaddith Dihlavi had spent years popularizing Hadith in South Asia, it was only after Shah Wali Allah's efforts that this could be truly achieved. Imam Hasan Saghani had compiled a new collection of ahadith, Mashariq al-Anwar, and had tried to popularize it. Shaikh `Abd al-Haq, on the other hand, considered Mishkat al-Masabih more suitable to be adopted as the basic collection of hadith, and, after adding commentaries to it, included it in the curriculum of his madrasah. Shah Wali Allah differed in this respect from his two great predecessors. In his curriculum, he adopted the Muwatta' of Imam Malik, adding notes and commentaries, to serve as the basic textbook of Hadith. Shaikh `Abd al-Haq had written two commentaries on Mishkat al Masabih, one in Arabic and the other in Persian; Shah Wali Allah did the same for the Muwatta.

Shah Wali Allah felt that the Muwatta' combined the method of the fuqaha' and that of the muhaddithin, giving his students the advantages of both the faqih and the muhaddith. Moreover, it is considered the source of at least three schools of Sunni jurisprudence by most scholars; Wali Allah considers it to be the basis of all the four schools and says that these schools may be considered commentaries on the text of Muwatta'.

Shah Wali Allah also initiated a movement for the study of Hadith in South Asia, thus preventing it from being relegated to total negligence in the region, and, in fact, in the Muslim world at large. This contribution was greatly appreciated by the great Egyptian writer and thinker, Sayyid Rashid Rida (d. 1935). He says:

If our brethren, the ‘ulama’ of India, had not taken care of the Hadith sciences in this age, these sciences would have totally vanished from the eastern countries. Since the tenth century Hijrah, the Hadith sciences had begun to weaken in Egypt, Syria, Iraq, and Hijaz. When I migrated to Egypt in 1351/1932, I saw that the speakers and the imams of the Egyptian mosques, al-Azhar, and others quoted unauthentic ahadith without making any distinction between the weak, the unknown, and the fabricated. The same was the case with the preachers, teachers, and authors.

The preservation of Hadith, initiated by Shah Wali Allah; resulted in unprecedented efforts in the teaching and writing of Hadith, which has continued for the past two hundred years. Almost every noted scholar and teacher of Hadith in South Asia traces his academic genealogy to Shah Wali Allah. Thus, Mirza Hasan 'Ali Saghir (d. 1839), Shaikh 'Abd al-Ghani (d. 1878), Shaikh Muhammad Muhiddith (d. 1879), Maulana Faiz al-Hasan Saharanpuri (d. 1887), Miyan Seyyid Nadhir Husain (d. 1902) Maulana Rashid Ahmad Gangohi (d. 1905), Maulana Khalil Ahmad (d. 1927), Maulana Anwar Shah Kashmir' (d. 1933), Maulana Muhammad Yusuf Banuri." (d. 1977) and Maulana Muhammad Zakariyya (d. 1982) all belonged to Wali Allahi tradition. So does the present writer, through his teachers, i.e., Maulana 'Abd al-Shakur, Maulana `Abd al-Rahman, and others. Maulana 'Abd al-Shakur was a disciple of Maulana Khalil Ahmad, the author of the celebrated work on Hadith, Badhl al-Majlhud fi Hall Abi Dawud and a student of Maulana Muhammad Mazhar Nanautavi (d. 1858).

Shah Wali Allah's most original contribution is the philosophical reconstruction of the science of Hadith, which he calls the science of the secrets of the Faith (‘Ilm Asrar al-Din), a science that discusses the beneficent considerations underlying the divine commandments, their wisdom and rationale. To him, this science, which is in fact the philosophy of Islam reconstructed, is the most difficult and intricate of all Hadith sciences, as well as the foremost and the most sublime of all the religious disciplines of Islam. A deep study of this science gives an insight into the underlying wisdom of the shari’ah. It has the same relationship with Hadith literature as prosody and metrics have with poetry, as logic has with philosophy, or as jurisprudence with the corpus juris and the bulk of legal literature. Shah Wali Allah says that very few people have delved deeply into this science; very few people have tried to formulate generalizations in the shari’ah. Only men like al-Ghazali and al-Khattabi have written on the subject. Shah Wali Allah's thinking on it has been expounded in his magnum opus, Hujjat Allah al-Balighah. In his view, the exposition of the wisdom and rationale of the commandments of the shari'ah would protect it from corruption and encroachments thus preserving its integrity.

Shah Wali Allah's philosophy can be regarded as a bridge between the medieval and modern eras of Islam in South Asia. Freeland Abbott compares him with Dante in this respect. Wali Allah's contribution in assimilating the various strands of the Islamic tradition and in presenting this synthesis in a systematic form was to prove invaluable for the Muslims.

CHAPTER-V

Some Juristic views and Discussions of Haz Shah Wali Allah

After determining the Shah's position as jurist it seems in order now to go through some important juristic views of Haz. Shah Wali Allah. By so doing we wil be in better position to properly assess and understand him as a rennorator of Islam and grasp with fair detail his valuable contribution and rennovatory services he could accomphish in the sphere of Islamic fiqh and jurisprudence.

Linking Fiqh to its original sources

The most important and for reaching service he rendered to the Islamic fiqh was that he vociferously laid great emphasis on linking it to its original sourlegal rulings must not remain limited only to some traditional books comprising chiefly in the opinions of the past jurists It rather, has to be linked to its base sources explaining simultanecously how the fiqhi principles and legal rulings have been extracted.

In his historic work, Hujitullahil Baligha, the Shah has dealt in fair detail how legal rulings ar derived from the hadiths of the Holy Prophet (SAWS). This important point has been discussed in the following chapter.

The Way the Ummah Received the Divine Law from the Prophet (SAWS)

Be informed that the community received the divine law from the Prophet in two ways.

1) The first of them is overt reception, which must be through a transmission which is either handed down from the beginning

by a large number of continuous channels (mutawatir) or non-mutawatir.

a) The *mutawatir* report may be word for word such as the great Qur'an or like a small portion of the hadiths such as the Prophet's, (may the peace and blessings of God be upon him) saying, "You will see your Lord."' Or it may be a *mutawatir* report which has been handed down according to its meaning such as many of the rules of purity, prayer, the alms tax, fasting, the pilgrimage, buying and selling, marriage, and making war; about which Muslims do not differ with one another.

b) Next there are the non-mutawatir reports of which the highest level are the mustafid, and these are things reported by three or more of the Companions, then the transmitters continued to increase until the fifth generation, and this is a type of report found in great numbers, and on it are based the chief issues of jurisprudence.

c) The next category are the reports (khabar) judged sound (sahib) or fair (Hasan) according to the hadith scholars known for their having committed many hadiths to memory, and the great ones among them.

d) Next there are reports about which there is some controversy (among hadith scholars), so that some accept them while others do not. Those hadiths among them which are supported by parallel transmissions, or by the opinion of most of the knowledgeable scholars, or by clear understanding, must be acted upon.

2) The second way of receiving the divine law is through indication (dalala), and this is that the Companions observed the Prophet, may the peace and blessings of God be upon him, speaking and acting, and then they derived from that a ruling of "obligatory" and other rulings, so that they informed about that ruling, saying, "Such and such a thing is compulsory, while some other one is simply permissible." Then the Successors likewise accepted this from the Companions, and the third generation recorded their legal opinions and judgments and strengthened the matter.

The greatest ones in this type (receiving through indication) are `Umar, 'Ali, Ibn Mas'ud, and Ibn 'Abbas, may God be pleased with them, but it is known that the conduct of (Umar, may God be pleased with him, was to seek counsel from the Companions and debate with them so that the ambiguous would become clear and assurance would come from that. Most of his legal opinions and judgments were followed in the East and the West of the earth, and this is the saying of Ibrahim. When `Umar died, "Nine-tenths of knowledge has departed," and the saying of Ibn Mas’ud, "`Umar was such that if he set us on a road we found it to be smooth." `Ali, may God be pleased with him, usually did not consult, and most of his decrees were issued in Kufa, and usually only a few people reported them from him. Ibn Mas’ud was in Kufa, and his legal opinions were generally reported only by the people of that region. Ibn 'Abbas used to use independent reasoning (Ijtihad) after the era of the first Muslims and contradicted the latter in many rulings, and his companions among the people of Mecca followed him in this, so that most of the Muslims did not adopt those of his rulings which were not supported by other rulings. As for other than these four, whose transmission of hadiths was on the principle of using an indication, they didn't distinguish the pillar and the condition from the manners and the practices of the Prophet, and they only had a little to say when there was conflict among hadith reports, or an incompatibility of indications, such as Ibn `Umar,' `A'isha, and Zaid Ibn Thabit, may God be pleased with them. The greatest in this type of receiving (through indication) among the Successors of Medina were the seven jurists, especially al-Musayyab in Medina, and in Mecca 'Ata ibn Abi Rabah)’ and in Kufa, Ibrahim (al-Nakha’i), Shuraih, and al-Sha'bi, and in Basra, al-Hasan. In each of these two ways (of receiving the divine law) there are gaps which are only restored by the other, and neither can manage without the other.

As for the first (overt reception), among its defects are changes which entered into the reporting based on the meaning (of the hadith), and there is no guarantee against changes in the meaning. Among its faults are that the command may have been given with regard to a specific event, and the transmitter thought that it was a general ruling. Also among them are that the statement may have been made in the emphatic voice, in order that they would adhere to it, but the transmitter took it to be compulsory or for-bidding, while this was not the case. Therefore, whoever had legal acumen and was present on the occasion, inferred from the cir-cumstantial evidence the true state of the matter such as the saying of Zaid (ibn Thabit), may God be pleased with him, about the ban on the sharecropping contract and the sale of fruit before its proper ripening, i.e., that it is evident that this was in the nature of advice.

As for (the defects of) the second type (reception through an indication), there entered into it the analogical reasonings of the

Companions and the Successors, and their inferences from the Qur'an and the practice of the Prophet, and their independent reasoning (ijtihad) was not always correct in all circumstances. Sometimes the hadith didn't reach one of them or reached him in such a way that it could not serve as a proof, so it was not acted upon. Then after that the true state of affairs was made know through the statement of another Companion, like the report of `Umar and Ibn Masu`d, may God be pleased with them, about making the ablution with earth after ejaculation.

Often the leaders of the Companions, may God be pleased with them, agreed upon something because reason indicated its benefit (irtifaq). On that account the Prophet stated, "You should follow my sunna and the sunna of the rightly-guided caliphs after me." Therefore this (agreement of some of the Companions) is not one of the roots of legislation.

Thus, whoever has gone deeply into the reports and the wording of the hadith will escape from pitfalls. Since the situation is thus, it is necessary for the one dealing with jurisprudence to be proficient in both movements and well-versed in both schools, and the best practices of the religion are those on which the majority of the transmitters and the bearers of knowledge have agreed and in which the two methods coincide, and God knows better.

Judging Among Divergent Hadiths

The basic principle is to implement every hadith unless inconsistency would preclude acting according to them all. In reality there can be no disagreement, except from our perspective. Thus if two opposing hadiths come to light under the topic of telling about an action of the Prophet, so that one Companion says that the Prophet, may the peace and blessings of God be upon him, did one thing and another says that he did something else, there is no conflict; for these two may both be considered permissible (mubah) if they fall under the heading of habit, not of religious observance; or one of the actions may be recommended (mustahabb) while the other is permitted, since there resulted from one of the actions the effects of drawing nearer to God and not from the other; or both of the acts may be recommended or compulsory and one is sufficient to fulfill the other when both come under the heading of drawing nearer to God. The memorizers of traditions among the Companions have made statements of this type about many of the practices of the Prophet such as his performing the witr prayer with eleven rak'ats, or with nine or seven; and such as his praying the tahajjud prayer aloud or silently. It is according to this principle that it is necessary to judge the case of raising of the hands at the time of ritual prayer to the ears or to the shoulders; and to decide among the ways of making the Tashahhudi of `Umar, Ibn Ma'sud and Ibn `Abbas; and concerning the witr, whether it is composed of a single rak'a or three rak'as, and concerning the invocations commencing the ritual prayer, and the invocations of the morning and evening, and the other causes and times. The fact that there are two (apparently conflicting) hadiths may indicate a way to be rid of some hardship when a case had preceded which caused this (hardship), such as certain features of the expiatory offerings, and the amount of the poll-tax for one who fights (against God and the Prophet), mentioned in a dictum (of the Prophet).

Or there may be in this a hidden reason for legislation which categorizes as obligatory, or recommended, one of the acts at one time and the other at another, or requires a thing on one occasion and gives a dispensation in it at another, so it is necessary to study this deeply. Or one of them may be an ordinance as interpreted strictly (a'zima) and the other a dispensation; if the legal force was manifest in the first case and the consideration of hardship in the second. If a proof of abrogation comes to light, this should be upheld. If one of them is the account of an action and the other takes a report back to the Prophet, then if the report is not absolutely definitive in forbidding or compelling, nor is the report absolutely sure in going back to the Prophet, then both may have a bearing in some aspect. But if the report is absolutely definitive, bearing on the Prophet's, may the peace and blessings of God be upon him, specifying acting upon it or its being abrogated, then the contexts of these two hadiths should be researched. If there are two reports and one of them is explicit in conveying a meaning lacking in the other, and their interpretation is close, then this has a bearing on one of them being the explanation of the other. How-ever, if the interpretation is far-fetched it does not have any bearing on the other unless there is extremely powerful circumstantial evidence, or the interpretation was transmitted from a Companion of the Prophet who was also a man of legal acumen such as the saying of (Abd Allah ibn Salam about the hour (on Friday) when prayers are most likely to be answered, that it is just before sun-set, and Abu Huraira (refuted this) by reporting that prayer was prohibited at this time. The Prophet had said, "No Muslim standing to pray asks Allah for something at that time..." Thus `Abd Allah ibn Salam said, "When a person is waiting for the prayer, it is as though he is in prayer," and this interpretation is far-fetched and would not have been accepted had it not be held by a Companion possessing legal acumen.

What confirms an exegesis as far-fetched is that if it were presented to sound minds without circumstantial evidence or its without having undergone belabored discussion, it would not be considered plausible, and if it is in opposition to a manifest allusion, a clear understanding, or a revealed textual source, then it is not permissible at all.

Under plausible interpretations come:

1) The restriction of a general statement when the customary practice has been to apply it to certain individual cases only in rulings similar to this one on these certain cases.

2) Generalizing in a situation where the customary practice has been not to be overly particular, such as in praising and blaming.

3) A generalization leading to the legislation being installed in a ruling after the principle of that ruling has been made clear; so that this comes to have the force of an unqualified proposition (qadiyya muhmala). An example is the Prophet's saying, "On whatever (land) the sky pours down (rain), the zakat of one-tenth applies," and his saying, "There is no alms tax on whatever is below five ausuq.

Among them (ways to deal with differing hadiths) is to reduce each hadith to one pattern if the anchoring reason (manat) adduced (for the 'ilia) and the relevance (to the judgment) attest to this, and to interpret both of the hadiths as making an act repre-hensible or indicating permissibility, in a general way, if this is possible; or interpreting emphasis as functioning as a deterrent factor if this has been preceded by a disputation. His saying, "Carrion is forbidden (hurrimat) you," refers to eating it, while his saying, "Your mothers are forbidden to you (hurrimat)," refers to marrying them. The Prophet's, may the peace and blessings of God be upon him, saying, "The evil eye is a reality (haqq)," means that its influence is proven while "The Prophet is true (haqq)," means he has truly been sent (by God). The Prophet's, may the peace and blessings of God be upon him, saying, "Error and forgetfulness have been removed from my community, refers to the (removal of the) sins which occur in these states.

His sayings, "There is no prayer except in a state of purity," "there is no marriage without a guardian, and "acts are only through their intentions, refer to the effectiveness of these things not ensuing (without these factors) which the law-giver established for them. (The Qur'anic verse), "When you are going to perform the prayer then perform the ablutions” means if you are not already in a state of having made the ablution. These are evident, and they are not to be interpreted, because the Arabs used each of the words in them in this sense and they meant what was suitable for that context, and this is their language in which they do not find any words diverging from what is apparent.

Then if two (hadiths) come under the scope of a fatwa (a legal recommendation) about an issue, or a judgment concerning a particular case, and if there comes to light a reason for legislation (`ilia) which differentiates between the two, the judgment is to be made according to this rationale. An example is that a youth asked the Prophet about kissing in the case of someone who is fasting and he forbade it; and when an old man asked, he permitted it. If the context of one of them and not the other indicates the existence of a need or a persistent request on the part of the questioner, or its being an easing of the demand for perfection, or the repu-diation of the person who was too strict on himself, then the decision will be made on the principle of (either) a strict interpretation (`azima) or a dispensation (rukhsa).

If there are two hadiths which present a solution to a person in difficulty or indicate two punishments for a criminal or two monetary expiations for the one who broke his oath; then the soundness of both hadiths is conceivable, although their abrogation is also possible. On this principle is the judgment about the woman who has a prolonged flow of menstrual blood who was sometimes given an opinion that she should take a full bath between every two prayers, and sometimes that she should calculate menstruation as lasting the number of days usual for her, or its being the days when a copious flow of blood is apparent, according to a report. She can choose between the two, for the usual length of the menstrual flow and the color of the blood, both of them, are proper signs for indicating menstruation for the fasting person. (And the Prophet gave the order about) giving food (to the poor) in the name of the man who died and had not made up for missing his fast, according to a report. The doubt of the person who thinks he has erred (in counting the rak'ats) in the prayer may be resolved in one of two ways; either by trying to find out what is correct, or by counting only what he is sure of, according to a report. The judgment in establishing lineage may be done through comparing physical features or by casting lots, according to a report.

If the proof of abrogation is forthcoming it must be applied, and abrogation can be known through the words of the Prophet, may the peace and blessings of God be upon him, such as his saying, "I had forbidden you to visit graves, but now you may visit them," or through recognizing the posteriority of one hadith to the other when it is not possible to combine them. If the law-giver legislated a law, and then legislated in its place another without mentioning the first, the Companions with legal acumen recognized that the latter one abrogated the first. Or if hadiths disagreed and one of the Companions decreed that one of them abrogated the other, that one is presumed abrogated but is not conclusively abrogated. The opinion of the legal scholars, i. e., that whatever they found to be in opposition to the practice of their teachers was abrogated, is not conclusive. Abrogation in those things which they showed to be the changing of a ruling to another ruling, was in reality the coming to an end of the ruling due to the cessation of its reason for legislation (`ilia), or due to the cessation of its being an anticipated means (mazinna) of serving the intended purpose, or due to something arising which prevented its being a reason for legislation, or due to the emergence of the preference for another ruling on the part of the Prophet, may the peace and blessings of God be upon him, through a manifest revelation (wahi Jali), or through his individual reasoning—that is, if the previous ruling had also been arrived at through his independent reasoning. God, may He be Exalted, said, speaking about the Night Journey, "The statement which comes from Me cannot be altered."

When, however, it is impossible to reconcile (two contradictory traditions) or to explain them by each other, and when nothing is known of an abrogating factor, then contradiction is established. Then, if a preference for one of them emerges, either due to a quality in the chain of transmitters in its having had many transmitters, the legal acumen of the transmitter, the strength of the link to the Prophet, the clear evidence of its going back to the Prophet, the transmitter's being the one involved in the affair such as the one asking for the opinion or the one being addressed or the one carrying out the act; or due to a quality of the text in its being very emphatic and explicit, or in view of the fact that the ruling and its reason for being legislated are more in conformity with the rulings of the divine law, and it being a reason for legislation which is strongly relevant (for the rulings) and whose effectiveness is recognized, or due to an extrinsic factor in its being accepted by more of the knowledgeable people; then this ruling will be preferred, and if not then both of the hadiths will have no force. This is a hypothetical situation which is scarcely to be found.

The saying of a Companion, "The Prophet commanded, forbade, judged and gave dispensations," then his saying "we were ordered and forbidden," then his saying, "such and such is the practice of the Prophet, and whosoever does this has disobeyed Abu Qasim," then his saying, "this ruling of the Prophet, clearly going back to him," and the

Companion's using methods of independent reason-ing in conceptualizing the reason on which the ruling is based, or in determining whether the ruling was compulsory or recommended, or general or particular; and the Companion's saying that the Prophet used to do such and such a thing—is clear in indicating that the action was done repeatedly, and the statement of another Companion that he used to do something else does not contradict it. His statement, "I used to keep company with the Prophet and I did not see him forbidding such-and-such," and "we used to do it in his time," clearly represent the sanctioning (taqrir) of an act and do not constitute a ruling stipulated in either the Qur'an or the sunna.

The wording of the hadiths may vary due to variations in the manner of transmission, and this is due to the process of transmitting the hadith according to its meaning, so if a hadith is brought forward and the reliable scholars are unanimous regarding its wording, then these are manifestly the words of the Prophet, may the peace and blessings of God be upon him. In this case it is possible to make an induction (istidlal) on the basis of something com-ing early or being later (in the text) and its having a "Waw" or a "Fa," and so on, concerning expressions which are additional to the basic meaning. If the transmitters differ with a plausible difference and they were of nearly equal status in legal acumen, memory, and number, then the obviousness (that these are the Prophet's words) collapses, and only that meaning upon which they all concur can be deduced. The majority of transmitters attended to the main ideas of the meaning, not to the peripheral factors, and if their status varies the saying of the reliable one, that of the majority, or that of the person most acquainted with the story should be adopted. If the saying of someone reliable indicates their greater precision, for example the transmitter's saying, "She said (`A'isha), `He sprang up' and she did not say, 'he stood up', and she said, `he poured water on his skin' and she did not say, 'he washed,'" then it should be accepted.

If they disagree inordinately (on some points) and are otherwise close and there is no reason for preference, then the particulars in which they vary can be discounted.

It the hadith which does not go back to the Prophet uninterruptedly, but is broken at the level of the Companion (mursal) is combined with circumstantial evidence, for example, it is supported by a hadith stopping at one of the Companions, or by a hadith whose chain is weak, or is made to reach the Prophet by some other hadith the reporters of which are different, or by the opinion of most of the knowledgeable people, or by a sound analogy, or by an allusion in a revealed statement, or if it is known that it was transmitted by a reliable authority; then it (this hadith) may be advanced as an argument, but it is lower in status than a trace-able hadith, and if (it is not supported) then it cannot be used.

Similar is the case of the hadith whose transmitter is an imprecise person, but against whom there is no charge, or whose transmitter is a person of unknown status. The preferable course is that it should be accepted if it is combined with evidence such as agreeing with an analogy or the practice of most of the knowledgeable people and otherwise it should not be accepted.

If a reliable transmitter is unique in reporting an addition which the silence of the rest does not preclude, then this is accepted; such as in tracing back the mursal hadith, or adding a person in the chain of transmitters, or mentioning the situation in which the hadith originated, the cause of its being transmitted, its prolixity, and its citing an extra sentence which does not alter the meaning of the text. If this (silence of the others regarding the addition) is impossible, such as in the case of the addition which changes the meaning or an unusual thing which would not customarily have been omitted; then it is not accepted. If one of the Companions construes a hadith in a certain sense and has undertaken indepen-dent reasoning (ijtihad) concerning this, then this is presumed correct, on the whole, as long as no proof can be furnished against it (this interpretation). If ijtihad was not used then this interpretation is strong, as in the case where an intelligent person who is knowledgeable about the language specifies (an interpretation) in the light of related circumstances and contextual evidence.

As for the disagreement of the reports of the Companions and the Successors, if it is easy to combine them through certain ways previously mentioned, then well and good, and if not, then two or more opinions may be found concerning the case under discus-sion, and which of them is the most correct must be investigated. Part of the well-kept knowledge is knowing the source of the schools of thought of the Companions, so make an effort and you will be granted a portion of this, and God knows better.

CHAPTER-VI

Shah Wali Allah's position and place in the order of the Fuqaha and His approach to Fiqh and Jurispredence

In order to determine the proper value and nature of Haz. Shah Waliullah's juristic works and his vast constributions to the enrichment of the Islamic Fiqh, it would be worthwhile to understand his approach to the Islamic knowledge in a general way. Only then one might be able to make a realistic assessment of his services and his outstanding academic achievements. In the light of his works a relatively more realistic position in the order of the outstanding personalities of Islam might be assigned to him..

Notably, the personality of the Shah is so versatile and his works and writings deal with so wide variety of subjects and themes. It has rendered this task curiously challenging. The result is that the adherents of all persuasions in the Indian sub continent adamentally try to prove him the follower of their specific persuasion and enthusiastically view him through their own particular prism. Strangely enough, all get success in finding some expressions and texual quotes in his writings of wide variety to support their views. For instance, Nawab Sayyid Siddiq Hasan Khan writes in his book Ithaaf-an-Nubala:

"Had he (the Shah) appeared in the first era of the Muslims, he would have been regarded as the leader of the mujtahidin and would have received the title of the 'leader of the leaders."

Zafarul –Mmuhassilin, p. 58 with reference to Ithaafun-Nubala.

The noted Islamic historian Moulana Abdul Hai of Lucknow has called the Shah the Imamul Aimma and the last of the mujtahidin and in support of his estimate of the Shah, has quoted the opinions of his noted contemporaries and the men of outstanding position in the area of Islamic learning,

(al-Ilaam bi man fil-Hind minal Alaam Vol. 6,P,410)

CHAPTER-VII

The Causes of the Disagreement of the Companions and the Successors Concerning Applied Jurisprudence (al-Furu)

Know that in the noble time of the Messenger of God, may the peace and blessings of God be upon him, law had not yet been put into writing. The mode of investigating legal rulings at that time was not like the investigative method of today's jurists who make their greatest efforts in explaining the pillars, conditions, and principles governing' each matter as distinguished from other mat-ters on the basis of its indicant (dalil), they posit hypothetical cases which they discuss and formulate definitions for whatever may be definable, and stipulate limits for whatever may be limited, and so on with the rest of their accomplishments.

As for the Messenger of God, may the peace and blessings of God be upon him, he used to perform ablution and the Companions would see his manner of ablution and imitate it without his explaining what was a (necessary) pillar (rukn) and what was his preferred mode of behavior (adab). He used to pray, and they saw his prayers so they prayed just as they had seen him praying. He performed the pilgrimage and the people noted the way he performed the pilgrimage and did as he had done. This was his usual way, may the peace and blessings of God be upon him, and he did not explain whether there were six or four obligatory aspects to the ablution, nor did he hypothesize that it would be possible that a person should do the ablution in any way other than in an uninterrupted sequence, so that he should rule on the soundness or invalidity of this, except on rare occasions. The Companions only rarely asked him about these things.

It is reported from Ibn 'Abbas, may God be pleased with them (he and his father), that he said, "I never saw any group better than the Companions of the Messenger of God, may the peace and blessings of God be upon him. Up to the time of his death they only had asked him about thirteen issues, all of which were found in the Qur'an. Among those issues were 'They will ask you about the fighting in the sacred month. Say, fighting in it is a great sin;' and 'They will ask you about menstruation.' He (Ibn 'Abbas) said, "They only used to ask about what would be beneficial for them." Ibn `Umar said, "Don't ask about things which have not yet arisen for I heard `Umar ibn al-Khattab curse someone who asked about something hypothetical." Al-Qasim said, "You are asking about things which we didn't use to ask about and you are probing into things which we didn't use to probe into. You are asking about things which we didn't know about and if we had known them we would not have been permitted to keep them hidden." It is reported from `Umar ibn 'Ishaq that he said, "Those of the Companions of the Prophet, may the peace and blessings of God be upon him, whom I have met outnumber those who had passed away before me and I never saw any group more easygoing in behavior and more lacking in severity than them." It is reported from `Ubada ibn Bisr al-Kindi, that he was asked about a woman who died while among a group of people where she had no guardian.' He said, "I have met many groups of people who weren't as severe as you and who didn't ask about (these) issues the way that you do." Al-Darimi reported these accounts. The Prophet, may the peace and blessings of God be upon him, was asked by people to give legal opinions about things as they came up, so that he gave opinions concerning them, and cases were brought before him to adjudicate so that he judged them. He saw people doing something good so he praised it; or a bad thing, so he forbade it. Whenever he issued a legal opinion on something, passed a judgment, or forbade an action, this occurred in public situations. Similar (was the procedure of) the two Shaikhs (Abu Bakr and `Umar), who when they didn't have any authorita-tive knowledge (‘ilm) about an issue would ask the people for a hadith of the Messenger, may the peace and blessings of God be upon him.

Abu Bakr, may God be pleased with him, said, "I didn't hear the Messenger, may the peace and blessings of God be upon him, say anything about her," i.e., the grandmother, and therefore he asked the people. After he led the noon prayer he asked, "Did any of you ever hear the Prophet of God, may the peace and blessings of God be upon him, say anything about the grandmother?" Al-Mughira ibn Shu`ba (669/70) said, "I have." Abu Bakr said "What did he say?" He replied, "The Prophet of God, may the peace and blessings of God be upon him, accorded her one-sixth (as a share of the inheritance). Abu Bakr then asked, "Does any one else besides you know of this?" Then Muhammad ibn Salama said, "He has spoken truly." So Abu Bakr accorded the grandmother one-sixth as a share.

(An example of the same type is) the story of 'Limar asking, the people about the case of the compensation for causing the death of a foetus, then his having recourse to the report of Mughira; and his asking them about the plague, then his accepting the report of `Abd Al-Rahman ibn `Awf, and likewise his having re-course to (Abd al-Rahman ibn `Awf's report in the story of the Magians; and the joy of `Abd Allah ibn Mas`ud at the report of Ma'qil ibn Yasar when it agreed with his opinion, and the story of Abu Musa turning back from the door of 'Umar and `Umar asking him about the hadith and Abu Sa'id's bearing witness in his favor. Examples of this are well-known and abundantly reported in the two Sahibs and the Sunan.

In summary, this was his noble habit, may the peace and blessings of God be upon him, and thus each Companion saw whatever God enabled him to see of his acts of worship, legal opinions,, and judgments, then he committed them to memory, reflected upon them and recognized the reason for each thing due to the convergence of contextual evidence." Thus the Companions interpreted some things as being permitted and some as being abrogated due to textual signs (amarat) and contextual evidence which satisfied them. What was most salient for them was the sense of confidence and assurance and they scarcely ever resorted to methods of legal reasoning, just as you observe that Arabic speakers understand the meaning of a conversation among themselves as they become as-sured through declarations, signals and allusions, without their doing this consciously. The noble era of the Prophet came to a conclusion while the Companions were still proceeding in this manner.

Once the Companions had dispersed among different regions and each one had become the exemplar for some region, new legal problems proliferated and questions began to arise so that they were asked to give legal opinions about these. Each one answered on the basis of his recollection of the texts or resorted to legal inference. If he didn't find in his recollection or what he had deduced something which could serve to respond he would try to figure it out based on his opinion and ascertain the rationale for legislation on which the Messenger of God, may the peace and blessings of God be upon him, had based the ruling in his textual pronouncements. Thus he would search for the rationale of the ruling wherever he could find it and would spare no effort in order to remain consistent with his, upon him be blessings and peace, intent.

At this point disagreement of various types occurred among them.

1) Among them are that one Companion heard a ruling of a judgment or legal opinion while another one did not, so that the latter used his own opinion to do ijtihad about the case and this ijtihad could also turn out in various ways.

A) One of them is that his ijtihad might turn out to concur with the hadith. An example of this is what Al-Nasai and others recounted about Ibn Mas'ud, may God be pleased with him. He was asked about a woman whose husband had passed away without settling her dowry portion. Then he replied, "I did not see the Prophet of God, may the peace and blessings of God be upon him, making a judgment in such a case," but they kept on coming one after the other and asking him for a month, and remained insistent. Finally he performed ijtihad based on his own opinion, and ruled that she should receive the dowry of his other wives, neither less nor more, and that she should observe the waiting period, and that she would inherit. Then Ma'qil ibn Yasar stood up and testified that the Prophet, may the peace and blessings of God be upon him, had ruled similarly in the case of another woman, so Ibn Mas'ud was overjoyed at this to a greater extent than he had been at anything else since accepting Islam.

B) The second way is that there may occur a case disputed between two Companions and then the hadith comes to light in such a way that it gets accorded the rank of being highly probable (ghalib al-zann) so that one of them retreats from his own reasoning in favor of the transmitted text. An example of this is what the Imams report about Abu Huraira, may God be pleased with him, who held that whoever got up in the morning in a state of ritual impurity could not keep the fast, until some of the wives of the Mes-senger of God, may the peace and blessings of God be upon him, informed him of a hadith which was contrary to his opinion, so he withdrew it.

C) The third is that a Companion comes to know of a hadith but not at that level which brings with it the rank of being highly probable (ghalib al-jann) so that he does not abandon his ijtihad, but rather impugns the authenticity of the hadith. An example is what the masters of theoretical jurisprudence relate about Fatima bint Qais who testified before `Umar ibn al-Khattab that she had been divorced by the triple formula, and that the Prophet of God, may the peace and blessings of God be upon him, had neither granted her maintenance nor a dwelling. He rejected her testimony and said, "I will not abandon the Book of God24 on the statement of a woman when I don't know if she is telling the truth or lying. A divorced woman will receive maintenance and a dwelling." `A'isha, may God be pleased with her, said to Fatima, "Don't you fear God!" i.e., because of her statement, "neither a dwelling nor main-tenance."" Another example of this type is that the two shaikhs (al-Bukhari and Muslim) reported that `Umar ibn al-Khattab held that the ab-lution with sand was not sufficient for someone in a state of major ritual impurity who did not find water. Then 'Ammar reported in his presence that he had been with the Messenger of God, may the peace and blessings of God be upon him, on a journey and had become ritually impure and did not find any water so that he rolled himself in the dirt and then mentioned this to the Prophet of God. The Prophet of God, may the peace and blessings of God be upon him, said, "It would have' been sufficient for you to have done thus," and he lightly struck his hands against the earth and rubbed both of them across his face and arms.26 However, cUmar did not accept this and the proof of it according to him was not estab-lished due to a concealed defect which he saw in it. Later that hadith became abundantly transmitted by many chains after the first reporter, and the suspicion that it was defective faded into obscurity so that they implemented it. D) The fourth of them is that the hadith hadn't reached the Companion at all. For example, what Muslim related about Ibn `Umar who ordered women to unbind their hair when they were doing the ritual bath. `A'isha heard this and said, "I'm amazed at Ibn '13-mar—he commands women to unbind their hair, why didn't he order them to shave their heads too! I used to take a bath to-gether with the Prophet of God, may the peace and blessings of God be upon him, using the same vessel, and I did no more than pour water over my head three times."27 Another example is what al-Zuhri mentioned about Hind, i.e., that she had not heard about the Prophet allowing women to pray during their menstruation, so she used to cry because she could not pray.

2) Among (causes for disagreement among the Companions) are that they saw the Prophet carrying out an action, and some inter-preted it as a means of drawing nearer to God (qurba) and others as being (merely) ethically indifferent. An example of this is what the experts in legal theory relate about the ruling on tahrib (i.e., the stopping to sleep at a place called al-Abtah between Mina and Mecca when returning from Mina during the pilgrimage)—i.e., that the Prophet, may the peace and blessings of God be upon him, stopped there to rest. Abu Huraira and Ibn cUmar held that this was done by way of performing an act of worship and thus they took it to be one of the normative Hajj practices. On the other hand, `A'isha and Ibn 'Abbas held that it was coincidental and not one of the practices of the pilgrimage.'

Another example is that the majority held that walking with a fast gait (ramal) during the circumambulations of the Ka`ba was a normative practice of the Prophet. Ibn `Abbas held that the Prophet, may the peace and blessings of God be upon him, had only done this coincidentally due to a coincidental occurrence which was the polytheists' saying that the fever of Yathrib had overcome the Muslims so that this was not a normative practice (sunna).29 3) Among them are disagreements based on misconstrual (wahm) and an example is that when the Messenger of God, may the peace and blessings of God be upon him, made the pilgrimage people saw him, so that some of them held that he had entered the state of Ihriim for cli-mra and then later performed the Hajj (tamattu`), while others said that he had entered Ihram for `Umra and Hajj together (qircin) and some that he had entered the state of Ihram for the Hajj only (ifrad).' Another example that Abu Dawfid reported from Sa`id ibn IChabir is that he said, "I said to (Abd Allah ibn `Abbas, '0 Ibn 'Abbas, I am surprised at the disagreement of the Companions of the Mes-senger of God, may the peace and blessings of God be upon him, concerning when the Prophet began to observe the Ihreun. He re-plied, 'In fact I am the most knowledgeable person about this. It occurred due to the fact that the Prophet only performed the Hajj once and out of this arose their disagreement. The Prophet, may the peace and blessings of God be upon him, set out (from Me-dina) on the pilgrimage and when he had prayed one rakca in the mosque of Dha Ilulaifa he entered the state of Ihram while he was sitting and made the exclamation `Labbaika' when he had finished his two rak`as, so that some groups of people heard him do this and I have preserved the recollection of his doing this. Then he mounted, and when his camel stood up bearing him he cried out, `I am at your service 0 Lord,' and (other) people also saw that he did this. This is due to the fact that people were coming to him group by group so that some heard him say `Labbaika' when his camel stood up bearing him, so that they said, 'The Messenger of God, may the peace and blessings of God be upon him, began saving "Labbaika" when his camel rose up bearing him.' Then the Prophet, may the peace and blessings of God be upon him, set out on the journey, and when he had climbed the heights of Baida', he called out 'I am at your service, 0 Lord' and some of the people saw this so that they said, 'He began saying "Labbaika" when he had climbed the heights of al-Baida'.' By God's oath he entered the state of Mram at his place of prayer and said `Labbaika' both when his camel rose up with him, and also when he readied the heights of al-Baida'."31 4) Among the causes for disagreement are inattentiveness and forgetting. An example is that it is reported that Ibn

`Umar used to say that the Prophet, may the peace and blessings of God be upon him, had made `Utnra during the month of Rajab, then (A'isha heard this and judged that Ibn `Umar had been inattentive.' 5) Among them are disagreements of judgment. An example is what Ibn `Umar or `Umar related from him, may the peace and blessings of God be upon him, about the dead person being tor-mented by the weeping of his family over him. Then `A'isha ad-judged that he had not construed the hadith properly. The Messenger of God, may the peace and blessings of God be upon him, was passing by the funeral of a Jewish woman whose family were weeping over her so that he said, "They are weeping over her while she is being tormented in her grave."' He (Ibn `Umar) had supposed that the torment was causally related to the weeping, so that the ruling was generally applicable to the case of every dead person. 6) Among them are their disagreement over the rationale for legislation behind the ruling, for example, standing up as a funeral procession passes. One opinion is that it is out of respect to the angels so it should be generalized to funerals of both Believers and Unbelievers. Another says that it is due to the awe of death, so it should be done for a Believer or a Unbeliever. Al-Hasan ibn `Ali, may God be pleased with both of them (he and his father), said, "The funeral bier of a Jew was passing by the Messenger of God, may the peace and blessings of God be upon him, and he stood up because he disliked that it should be raised above his head,"34 so that he considered that this applied only in the case of Unbelievers. 7) Among them are their disagreeing over resorting to two con-flicting rulings. For example, the Prophet, may the peace and blessings of God be upon him, gave permission for temporary marriage during the year of Khaibar and the year of Autas, then he forbade it. Then Ibn 'Abbas said, "The dispensation was based on an ex-tenuating circumstance and the prohibition came due to the cessa-tion of that circumstance, thus the prohibition remains in force."' The majority of the scholars held that the dispensation (rukhsa) had made it allowable and that the prohibition has now abrogated this. Another example is the Prophet's, may the peace and bless-ings of God be upon him, forbidding facing the Qibla while per-forming istinja'36 so that one group held this ruling to be generally applicable and not abrogated. Mar saw him urinating while facing the Qibla a year before his death, so that he held that this abro-gated the previous prohibition. Ibn `Umar saw him relieving him-self with his back to the Qibla and his face toward Syria,37 so that he used this to refute their opinions. Another group combined the two reports, so that Al-Sha`bi and others held that the prohibition applied in the particular circumstance of being out of doors, but that if the person were in a toilet, then there would be no impor-tance given to facing towards or having one's back turned to the Qibla. One group held that the Prophet's prohibition was definitive and universally in force, and that what he himself had done was possibly particular to his case only, so that it (the prohibition) could neither be considered abrogated nor limited to specific circumstances.38

In summary, the opinions of the Companions of the Prophet, (may the peace and blessings of God be upon him) varied and each one of the Successors learned whatever he was able from them, in like manner. Thus the Successor memorized whichever hadiths of the Prophet and opinions of the Companions he heard and thought them over, and he reconciled the variations in so far as he was able and preferred some opinions over others. Some of the sayings vanished from their consideration even though they had been re-ported from some of the most important Companions. For example the opinion reported from `Umar and Ibn Maschd concerning (the invalidity of) performing the ablution with sand on the part of a person who was ritually impure in the major sense (juniib)," faded away once the hadith reports from 'Ammar and `Urnran ibn al-Hasin and others became abundantly transmitted.' At this point each learned scholar among the Successors came to have his very own school, so that within every city there stood out a leading scholar like Sa`id ibn al-Musayyab (712) and Salim ibn `Abd Allah ibn `Umar (725) in Medina, and after them al-Zuhri (742) and al-Qadi Yahya ibn Sacid (761) and Rabica ibn `Abd al-Rahman (753), and `Ata' ibn Abi Rabah (732) in Mecca, and Ibrahim al-Nakha'i (715) and al-Sha`bi (c. 728) in Kufa, and Al-Hasan al-Basri (728) in Basra, and Tawas ibn Kaisan (c. 720) in Yemen, and Maktifil (730-736) in Syria. Thus God made people avid and desirous of their knowledge so that they learned from these scholars hadiths of the Prophet, legal opinions and sayings of the Companions; while they also learned from them their own legal opinions and verifica-tions. Those who needed legal opinions would consult them, legal issues were discussed among them, and cases were put before them to judge. Sacid ibn al-Musayyab and Ibrahim (al-Nakhaq) and their peers compiled together all of the categories of jurisprudence, and within each topic they possessed principles that they had learned from the pious ancestors. Sald and his associates believed that the people of the two Holy Cities were the most reliable in jurisprudence so they based their school on the legal opinions of `Abd Allah ibn `Umar, (A'isha, and Ibn `Abbas, and the verdicts of the judges of Medina. They compiled whatever they were able of these, then they examined them with respect to reliability and scrutinized them. Whatever they found to be agreed upon by the learned scholars of

Medina they firmly held to, and whenever they found them in disagreement, they took the strongest opinion and the most preponderant, either due to the numbers of them who had held this, or due to it agreeing with a strong analogy or a clear inference from the Qur'an and sunna, or for some other similar reasons. When they didn't find among what they had preserved from those scholars any response on the issue they derived it on the basis of their sayings, and traced its allu-sions or logical entailments.' Thus they came up with many cases in which each topic has sub-divisions. Ibrahim and his associates thought that `Abd Allah ibn Mas`fid and his associates were the most reliable persons in jurisprudence as shown by what `Alqama (680/81) said to Masrfiq (682/83). "Is anyone of them more reliable than `Abd Allah (Ibn Mas'ad)r42 And the saying of Abu Hanifa, may God be pleased with him, to Al-Auzaci, "Ibrahim is better at fiqh than Salim, and if not for the virtue of (`Abd Allah Ibn `Umar's) having been a Companion, I would have said that `Alqama had more legal acumen than `Abd Allah ibn `Umar; and (Abd Allah (ibn Mas'ild) is in a class by himself.' The basis of his (al-NalchaTs) school consists of the fatwas of `Abd Allah ibn Masfid, the judgments and fatwas of `Ali, may God be pleased with both of them, and the judgments of Shuraih and other Kufan judges, so that he combined whatever he was able of this. Then he did for their reports what the Medinan scholars had done for the reports of the Medinans. He derived as they had derived, then outlined for this the issues of jurisprudence according to sub-divisions under each topic. Said ibn al-Musayyab was the spokesman for the jurists of Medina and had memorized

Differences of opinions amongst the Fuqaha

Prefatory Note

As it is evident. The Qur’ans strongly condemns those who indulge in disagreements and adopt divergent views in matters of *din*, religion, causing a weakening of faith;* yet there has been considerable disagreement over the correct interpretations of the Oul'anic injunc-1-ions, not only among later scholars, but even among the founders the legal schools and the Successors.t Indeed, disagreement can traced back even to the times of the Cornpanionst of the Prophet. One can hardly point to a single Qur'anic verse of legal import which has received complete unanimity as regards its interpretation. One is bound to ask whether the Qur'anic condemnation applies to all who have disagreed in this way. If it does not, then what kind of schism and disagreement does the Qur'an denounce? The reader may rest assured that the Qur'an is not opposed to differences of opinion within the framework of a general agreement on the fundamentals of Islam and the broad unity of the Islamic community. In addition it is not opposed to disagreement arising from an earnest endeavour to arrive at the right conclusions on a particular subject: the only disagreements condemned by the Qur'an are those arising out of egotism and perversity, leading to mutual strife and hostility. The two sorts of disagreement are different in character and give rise to different results. The first kind is a stimulus to improvement and the very soul of a healthy society. Differences of this kind are found in every =.ociety whose members are endowed with intelligence and reason. Their existence is a sign of life, while their absence only serves to demonstrate that a society is made up not of intelligent men and women but rather of blocks of wood. Disagreements of the second kind, however, are of an altogether different character and lead to ruin and destruction of the people among whom they arise. Far from being a sign of health, their emergence is symptomatic of agrave„ sicknesse The first kind of disagreement exists among scholars who are all agreed that it is their duty to obey God and His Prophet. They also agree that the Qur'an and the Sunnah are their main. sources of guidance. Thus, when scholarly investigation on some subsidiary question leads two or more scholars to disagree, or when two judges disagree in their judgement on some dispute, they regard neither their judgement, nor the questions on which their opinion has been expressed, as fundamentals of faith. They do not accuse those who disagree with their opinion of having left the fold of true faith. What each does is rather to proffer his arguments showing that he has done his best to investigate the matter thoroughly. It is then left to the courts (in judicial matters) and to public opinion (if the matter relates to the community at large) either to prefer whichever opinion seems the sounder, or to accept both opinions as equally permissible. Schism occurs when the very fundamentals are made a matter of dispute and controversy. It may also happen that some scholar, mystic, mufti, or leader pronounces on a question to which God and His Messenger have not attached fundamental importance, exaggerating the significance of the question to such an extent that it is transformed into a basic issue of faith. Such people usually go one step further, declaring all who disagree with their opinion to have forsaken the true faith and set themselves outside the commun-ity of true believers. They may even go so far as to organize those who agree with them into a sect, claiming that sect to be identical with the Islamic community, and declaring that everyone who does not belong to it is destined to hell-fire! Whenever the Qur'an denounces schismtic disagreements and sectarianism, its aim is to denounce this latter kind of disagreement. As for disagreements of the first category, we encounter several examples of these even during the life of the Prophet. The Prophet not only accepted the validity of such disagreements, he even expressed apporoval of them. For this kind of disagreement shows that a community is not lacking in the capacity for thought, for enquiry and investigation, for grasping or wrestling with the problems it faces. It also shows that the intelligent members of the community are earnestly concerned about their religion and how to apply its injunctions to the problems of human life. It shows too that their intellectual capacities operate within the broad framework of their religion, rather than searching beyond its boundaries for solutions to their problems. And it proves that the community is following the golden path of moderation. Such moderation preserves its unity by broad agreement on fundamentals, and at the same time provides its scholars and thinkers with full freedom of enquiry se• that they may achieve fresh insights and new interpretations within the framework of the fundamental principles of Islam.

more judgments of `Umar and hadith of Abu Huraira than any of them, while Ibrahim (al-Nakha'i) was the spokesman for the Kufan jurists. Thus, if they said something without attributing it to some-one, this usually was attributed to one of the pious ancestors either explicitly, by allusion, or in some other way. The jurists of their two cities (Medina and Kufa) concurred on their accuracy, learned from them, reflected on what they learned, and drew further infer-ences on the basis of it, and God knows better.

CHAPTER-VIII

The Causes for Disagreement among the Schools of the Jurists

Know that God, may He be exalted, brought into being a generation of scholars after the era of the Successors who conveyed knowl-edge in fulfillment of the promise of the Prophet, may the peace and blessings of God be upon him, when he said "A just person of every succeeding generation will convey this knowledge."' Thus these persons learned from those who had been with the Prophet the manner of performing the lesser and greater ablutions, prayer, pilgrimage, marriage, business transactions, and all other common-ly occurring things. They transmitted the hadith reports of the Prophet, may the peace and blessings of God be upon him, heard the judg-ments' of the Qadis of the various cities and the fatwas of their muftis and they inquired about legal issues, and carried out iftihad concerning all of these things. Then when they became leaders of the people and were consulted about all religious matters, they fol-lowed in the footsteps of their teachers and did not fail to study the allusions (ima'cit) and logical implications (ivida'at) (of re-vealed texts). Thus they judged, gave legal opinions, transmitted hadith, and taught, and the procedure of (all of the) ulema of this generation was similar. The essence of the procedure of these scholars was to hold to both the hadith which went back uninterruptedly to the Prophet (musnad) and those related about him but not directly on a Com-panion's authority (mursal). They deduced knowledge using the sayings of the Companions and Successors which might be hadiths transmitted from the Messenger of God, may the peace and bless-ings of God be upon him, which they considered to be less author-itative, so they termed them (these hadith) interrupted (mauqiif) before reaching the Prophet. An example is what Ibrahim (al-Nakhaci) said while he was transmitting a hadith about the Prophet, may the peace and blessings of God be upon him, forbidding crop futures contracts and the sale of fresh dates still on the tree for dried dates' It was asked of him, "Have you learned from the Prophet of God(s) any other hadith than this?" He answered, "Yes, but I prefer to say "`Abd Allah said," or "(Alqame said." Likewise al-Sha`bi5 said, when he was asked about a hadith which was said to go back to the Prophet, may the peace and blessings of God be upon him, "I prefer to say that it goes back to a great person at a lesser rank than the Prophet, may the peace and blessings of God be upon him, so that if there should be any addition to or deletion from it, it comes from someone lesser than the Prophet.' In other cases they deduced from sayings of the Companions using inferences (istinbcit) on their part from revealed sources or by reasoned conclusions (ijtihad) based on their own opinions. In all of these things their procedure was better, and they were more accurate, closer in time, and knew more religious sources by heart, than those who came after them. For this reason implementing their rulings was prescribed unless they disagreed or a hadith of the Prophet of God, may the peace and blessings of God be upon him, manifestly conflicted with their opinion. It was also their method in cases when the hadith reports of the Prophet of God, may the peace and blessings of God be upon him, were at variance with one another about some issue, to refer to the opinions of the Companions. If the Companions held that some hadiths were abrogated or that their apparent meaning should be disregarded; or if they did not pronounce them abrogat-ed but concurred on leaving them aside and not holding them ob-ligatory—this would be tantamount to rejecting any legalistic force (cilia) in them, or to a ruling that they were abrogated or should be interpreted—and the jurists used to follow the Companions in all of these matters. An example is the doctrine of Malik concerning the hadith about a dog's saliva.' This hadith has been reported but I don't understand what it really means. In his Mukhtasar al-U.sfil Ibn tiajib8 related it, but I do not see the jurists acting upon it. When the opinions of the Companions and Successors differed about an issue, then the preference of every scholar was for the opinion of the people of his city and his teachers since he was more able to distinguish their sound opinions from their faulty ones, was more cognizant of the principles connected to these opinions, and would be predisposed toward their superiority and erudition. The way of `Umar, `Uthman, Ibn `Umar, `A'isha, Ibn 'Abbas, Zaid ibn Thabit, and their associates such as Sacid ibn al-Musayyab who among them knew best `Umar's judgments and the hadith of Abu Huraira; and those such as `Urwa, Salim, (Ata' ibn Yasar, Qasim, `Ubayd Allah ibn `Abd Allah, al-Zuhri, Yafiya. ibn Sacid, Zayd ibn Aslam, and Rabica was more worthy of being followed than others according to the people of Medina due to what the Prophet, may the peace and blessings of God be upon him, had explained about the virtues of Medina, and due to its being the abode of the jurists and the gathering place of the scholars in every age.

Therefore you find Malik following their methods of reason-ing and it is well-known that Malik upheld the consensus of the people of Medina and that al-Bukhari consecrated a chapter to "Taking Up What the People of the Two Holy Cities Agree Upon." The school of (Abd Allah ibn Macsiid and his associates, and the judgments of 'Ali, Shuraih, and al-Shag* and the fatwas of Ibrahim were more worthy of being followed than others according to the people of Kufa and this is represented by `Alqama's saying when Masrilq9 leaned toward the opinion of Zaid ibn Thabit concerning giving equal shares of inheritance. 'Alqama said, "Is anyone of you more reliable than `Abd Allah (ibn Mascild)?" Then he replied, "No, but I saw Zaid ibn Thabit and the people of Medina doing tashrikl° and if the people of the region concur about something they firmly hold to it."" About this same type of issue Malik said, "The established practice about which there is no disagreement among us is such and such, and if people differ, then act upon the stron-ger and preferable opinion—either due to the large number of those who hold it, or due to it agreeing with a strong analogy, or due to it being derived from the Qur'an and the practice of the Prophet. This is the type of instance in which Malik said, "This is the most correct (opinion) among those which I have heard." If the scholars did not find among the sources that they had memorized a response to an issue they derived it on the basis of their (the Companions') sayings and sought out allusions and log-ical implications (within these sayings). In this generation they were inspired to record hadiths so that Malik and Muhammad ibn `Abd al-Rahman Ibn Abi Dhi'b (775) recorded them in Medina, and Ibn Jurayj (767) and Ibn `Uyayna (814) in Mecca, and al-Thauri (778) in Kufa, and Rabi` ibn al-Sabih (777) in Basra. All of them fol-lowed the procedure which we mentioned, and when (the Caliph) Mansur performed the pilgrimage he said to Malik, "I have de-cided to order that the books which you have compiled (the Muwatta') should be copied and then I will send copies to every garrison town of the Muslims and command them to follow what is in them, and not to go beyond them to any other source." Malik replied, "0 Commander of the Faithful, don't do this, for sayings (of the Com-panions and Successors) are already known to people, and they have heard hadith and have transmitted reports. Each group fol-lows what they already know and differences have arisen, so leave people with what each locality has chosen for itself. A story has also been told about Harlin al-Rashid, that he consulted Malik regarding having the Muwatta' hung up in the Ka`ba, and urging the people to act according to it. Malik replied, "Don't do that, for the Companions of the Messenger of God, may the peace and bless-ings of

God be upon him, differed about the branches of the law (fitrie)12 and they dispersed to various localities and each practice (of the Prophet) is already carried out. Thereupon Harlin said, "May God grant you success, 0 Ab5 `Abd Allah!" Al-Suytitti related this.

Malik was the most reliable of them concerning the hadiths which the Medinans reported from the Messenger of God, may the peace and blessings of God be upon him, and the most trustworthy of them concerning the chain of transmitters and the most knowledgeable of them concerning the judgments of `Umar and the opinions of `Abd Allah ibn `Umar and `A'isha and their associates among the seven jurists.13 Through him and other scholars like him the sci-ence of hadith transmission and juristic opinions was established. Once he became the established authority he taught hadith, gave legal opinions, benefited the people and distinguished himself. This saying of the Prophet, may the peace and blessings of God be upon him, "Soon people will travel great distances seeking knowledge, but they will find none more knowledgeable than the scholar of Medina,"" truly applies to him (Imam Malik). This hadith was nar-rated by Ibn `Uyayna and `Abd al-Razzaq— and the word of these two should be sufficient. Malik's associates collected reports and preferred opinions and summarized them, edited them, explained them, derived rulings on issues from them and discussed their prin-ciples and proofs. They (eventually) dispersed to the Western lands and all reaches of the world so that through them God brought great benefit to His people. If you would like to verify what we have said concerning the basis of Malik's school then consult the book al-Muwatta' and you will find it to be as we have reported. Abu Hanifa, may God be pleased with him, was the closest of them to the way of Ibrahim (al-Naldial) and his contemporaries and very rarely departed from his teachings. He was extremely tal-ented in making legal derivations based on Ibrahim's school and was a precise inquirer into the meanings of the derivations, and he gave the fullest attention to positive law (al-fura`). If you wish to verify the truth of what we have said then go over the statements of Ibrahim and his contemporaries in the book al-Athar of Muhammad (Abu Yasuf, 798), may God have mercy on him, and the faint' of `Abd al-Razzaq (827),15 and the Musannaf of Abu Bakr ibn Abi Shayba;16 then compare these with his school and you will find that he doesn't diverge from this procedure except on insignificant occasions and that even on these minor occasions he did not go beyond what the jurists of Kufa held. The most well-known of his students was Abu Yasuf (731/2-798), may God be pleased with him, and he held the post of chief-judge during the reign of Haran al-Rashid and thus he was instrumental in the emergence of Abu Hanifa's school and in judg-ments being based on it in the regions of Iraq, Khurasan, and Transoxiana. The best compiler and most assiduous student among them was Muhammad ibn al-Hasan (al-Shaibani, 805), and it is reported that he studied law with Abu Hanifa and Abu Yasuf and then went on to Medina where he studied the Muwatta' with Malik. After that he went over it on his own and correlated the school of his associates with the Muwatta', issue by issue, whenever they could be harmonized. If they could not be so harmonized and he saw that a group of the Companions and the Successors held the same opinions as his associates, then he held this to be his doctrine; but if he found the jurists using a weak analogy or a feeble derivation which disagreed with a sound hadith or which was opposed by the practice of most of the scholars, he abandoned it in favor of one of the opinions of the pious ancestors which he found preferable. These two (Abu Ytisuf and Muhammad ibn Hasan al-Shaibani) followed the way of Ibrahim al-Nakhaq and his contemporaries in so far as they were able, just as Abu Hanifa, may God be pleased with him, had done. These (three Hanafi jurists) only were are variance in either one of two cases. Either the two students disagreed with a derivation which Abu Hanifa had made based on Ibrahim's opinion, or the opinions held by Ibrahim and his peers were at variance and the two students disagreed with Abu Hanifa concerning which opinion they found to be preferable over the others. Muhammad (ibn Hasan), may God have mercy on him, compiled and gathered the opinions of these three (Ibrahim, Abu Hanifa and Abu Yiisuf) and this ben-efited many people. The followers of Abu Hanifa, may God be pleased with him, devoted themselves to these compilations by abridging them, ex-plicating them, commenting on them, making derivations, estab-lishing fundamental principles, and making deductions. Later they dispersed to Khurasan and Transoxiana and this became known as the school of Abu Hanifa.

Al-Shafi'i came on the scene during the early emergence of these two (Maliki and Hanafi) schools and at a time when their legal theory and positive law had begun to be elaborated. He examined the procedure of the earliest figures and found in it certain matters which kept him from following their method and this he discusses at the beginning of his Kitab

1) Among these matters is that he found that they accepted hadiths not connected to the Prophet through a Companion (mursal) and hadiths which were otherwise interrupted (munqati`), and that these two types of hadith in many cases were defective. When he col-lated the chains of transmission of the hadiths it became evident that many of the hadiths

not transmitted directly by a Companion from the Prophet were baseless, and many conflicted with those hadiths which were uninterruptedly transmitted (musnad). He de-cided not to accept a mursal hadith unless certain conditions were fulfilled, and these are mentioned in the books of juristic theory.'

2) A second among the factors which dissuaded him from fol-lowing their way was that the rules for collating the variants had not been rendered precise by the earlier figures, so that due to this defects had entered into their tjtihdds. Therefore al-Shafici estab-lished principles for doing this and recorded them in a book' and this was the first recording made of the theoretical bases of juris-prudence (u.si.il al-fiqh). An exemplification of this is what we have heard concerning al-Shafici, i.e. , that he went over to Muhammad Ibn Hasan's while the latter was challenging the scholars of Me-dina about their giving a judgment concerning one witness (being sufficient) for giving an oath. Ibn al-Hasan held that this judgment was augmenting the Qur'an.20 Al-Shafil said, "Is it affirmed by you that it is not permitted to augment what the Qur'an says on the basis of the report of a single individual?" He replied, "Yes." al-Shafici said, "Then why do you hold that the will in favor of an heir is not permitted based on the Prophet's, may the peace and blessings of God be upon him, saying, "Know that there is no will in favor of an heir,"2' while God, may He be Exalted, said in the Qur'anic verse, "It is prescribed when death is drawing near to one of you,"22 (that if some property is to be left a will should be made in favor of parents and relatives).23 He raised a number of objections of this sort to him so that Muhammad ibn al-Hasan was silenced. 3) A third reason is that some of the sound hadiths were not known to the ulema among the Successors who were charged with delivering legal opinions, so that they performed independent rea-soning based on their personal opinions, made generalizations, or followed one of the deceased Companions, delivering legal opin-ions according to his authority. Then when these hadith reports later became known in the third generation, they were not imple-mented out of the supposition on their part that these conflicted with the practice and custom of the people of their city about which they all agreed, and that this constituted a reason for rejecting these hadith and a case for not taking them into consideration. Or (in some cases) these hadith did not come to light in the third, generation, but only after that at the period when the hadith scholars deeply investigated the chains of transmission and traveled to all corners of the earth seeking them out from the bearers of tradition-al knowledge, so that the body of those hadith which had only been transmitted by one or two persons among the Companions, and passed on from them by only

one or two persons, proliferated, and in this way the matter continued. Thus these had not been known to the jurists (ahl al-fiqh) and only came to light in the time of the memorizers who collated the chains of many of the hadith, for example, those transmitted by the people of Basra, although those in other regions were ignorant of them. Al-Shafici explained that the knowledgeable people among the Companions and Successors never ceased seeking out the hadith reports relative to an issue, and if they didn't find any then they would seize on to some other means of deduction (istidlal). Then if they became aware of a hadith after that they would revoke their answer based on ijtihad in favor of the hadith. Therefore if this were the case, their (the Companions') failure to have (previously) adhered to the hadith did not constitute a reason for rejecting it, never indeed—unless they explained the reason behind this rejection. An illustration of this is the hadith about the two large jars24 for this is a sound hadith transmitted by many chains, the majority of them going back to Abu al-Walid Ibn Kathir from Muhammad ibn Ja`far ibn al-Zubair from `Abd Allah—or from Muhammad ibn `Ibad ibn Ja`far from `Ubayd Allah ibn `Abd Allah—both of these from Ibn `Umar. Then after that the chains of transmission branched out further. These two hadith transmitters (Muhammad ibn Ja`far and Muhammad ibn 'Ibad), although they were considered to be reli-able, were not among those who were authorized to give legal opinions, nor did people depend on them. For this reason this hadith did not come to light in the period of Said ibn Musayyab, nor in the time of al-Zuhri, and neither the Malikis nor the Hanafis proceeded according to it, so they did not implement it, while al-Shafici did. Similarly the hadith about con-tract options remaining open as long as the parties are in each oth-ers' company (khiyar al-majlis), for it is a sound hadith,25 transmitted by many chains of reporters. Among the Companions Ibn implemented it and so did Abfl Huraira but it was not known among the seven jurists and their contemporaries so they did not hold it. Therefore Malik and Abfl Hanifa held this to be a reason for re-jecting the hadith while al-Shafil implemented it.

4) The fourth of them is that the opinions of the Companions were collected at the time of al-Shafi 'I, so that these came to pro-liferate, disagree with one another, and branch out, and he saw that many of them opposed sound hadiths since the Companions had not been aware of those hadiths. He saw that the pious ancestors had never ceased giving preference to the hadith in such cases so he abandoned rigid adherence to their opinions when these sayings did not agree saying, "They are (only) human beings and so are we."

5) The fifth reason is that he saw that a group of the jurists mixed personal opinion, which the divine law did not sanction, with analogical reasoning, which it affirmed; so that they did not distinguish the one from the other and they sometimes termed this istihsan 26 What I mean by personal opinion (ra'y) is that they as-cribe the anticipated source of some hardship or benefit (maslaha) as being the reason for legislation (cilia) behind the ruling, while qiyas would be syllogistically extracting the reason for legislation from the ruling of the revealed sources and basing the ruling on this reason. Al-Shafi`i completely nullified this type of personal opinion (ra'y), saying, "whoever does istihsan wants to become the lawgiver." Ibn al-I ajib related this in Mukhtasar al-Usiil.27 An example of this is the ruling concerning reaching puberty or the maturity of an or-phan which is a covert matter. Therefore they established the ex-pected time of maturity as reaching twenty-five years in its place saying, "When an orphan attains this age his property should be remitted to him." They opined that this was istihsan,, while the derivation based on analogy is that it should not be remitted to him . 28 In sum, since Al-Shafici found things like this occurring among the procedure of the preceding figures he started jurisprudence over from the beginning and set out its theoretical foundations, drew out their practical ramifications, and compiled books distinguish-ing himself and benefiting humanity. The jurists concurred with him and devoted themselves to summarizing, commenting on, making deductions, and deriving rulings from his books. Then they dis-persed to the various cities so that this became the Shatil school, and God knows better.

CHAPTER-IX

The Difference Between the People of the Hadith and Those Who Exercise Personal Opinion

You ought to know that there were among the ulema at the time of Sa`id ibn al-Musayyab, Ibrahim, and al-Zuhri and in the time of Malik and Sufyan, and after that, a group who despised engaging in the use of personal opinion, and feared giving fatwas and making deductions except in cases of unavoidable need, and their greatest concern was for transmitting the reports of the Prophet of God, may the peace and blessings of God be upon him.

`Abd Allah ibn Mas'ud was asked about a matter and he said, "I would hate to permit for you something which God had forbidden to you, or that I should forbid a thing which God had permitted you." Mu'adh ibn Jabal said, "O People, don't hasten to calamity before it has struck, for there will always remain those among the Muslims who, if asked, will respond with a prophetic tradition." Similar statements were reported from `Umar, `Ali, Ibn `Abbas, and Ibn Mas'ud concerning the dislike of speculative discussion of matters which had not occurred. Ibn 'Umar said to Jabir ibn Zaid "You are one of the jurists of Basra so don't give legal opinions unless they are based on a conclusive Qur'anic injunction or an established prophetic practice, for if you do otherwise you will perish and cause the ruin of others." Abu al-Nasr said, "When Abu Salama arrived at Basra, Hasan (al-Basri) and I came to see him and he said to Hasan, 'Are you Hasan? There is no one in Basra whom I would rather meet than you, and this is because I heard that you give fatwas on the basis of your personal opinion, so (in the future) don't give a legal opinion based on your personal opinion unless there is a sunna from the Prophet, may the peace and blessings of God be upon him, or a revealed Qur'anic verse." Ibn al-Munkadir said, "The scholar is a mediator between God and His servants—so he had better find a way out for himself." Al-Sha`bi was asked, "What did you do when you were asked (about legal matters)?" He replied, "You have asked the expert. If when any person were asked about an issue, he would say to his associate, "give a fatwa on the question," then in the very same way this would go on from one to another until it wound up back up at the first person." Al-Sha`bi said, "Accept whatever these persons reported to you from the Messenger of God, may the peace and blessings of God be upon him, and what they said on the basis of their own opinion, throw in the toilet." Al-Darimi related all these reports. Then the recording of the Prophet's hadith and reports from the Companions and the writing of the Qur'an manuscripts spread in the Islamic regions until at last there remained very few hadith transmitters who did not have (made of their hadith collections) a recorded copy, a collation or a manuscript due to their need of this on some important occasion. Thus the great scholars of that time who had attained knowledge circulated among the regions of the Hijaz, Syria, Iraq, Egypt, Yemen, and Khurasan and collected the books, studied the manuscripts, and carefully scrutinized the less known and rare hadiths. Through the great endeavors of these people there were collected hadiths and sayings which no one had ever gathered before, and they could do what had never before been possible, and many chains of hadith transmission became known to them, so much so that some hadiths were known to them through over one hundred or more lines of transmission. Some of the chains brought to light what had been obscure about certain others and they recognized the status of each hadith in being transmitted by a single person or by a wide variety of transmitters. They were enabled to investigate the concurring (mutabi`eit) and supporting (shawethid) hadiths and many sound hadiths came to light for them which had not been known to the people previously giving legal opinions. Al-Shafil said to Ahmad (ibn Hanbal), "You are more knowledgeable about the hadiths than I, so if there exists a sound report, please inform me so that I can follow it, whether it is Kufan, Basran, or Syrian." Ibn al-Humam related this.

This is because a few sound hadiths were only related by the people of a particular locale such as the Syrians or Iraqis or the people of a particular family such as the manuscript of B arid transmitted from Abu Burda from Abu Musa," and the manuscript of `Amr ibn Shu'aib (736) transmitted from his father and from his grandfather. In other cases a certain Companion might have been of minor influence and obscure so that only a small group of hadiths were passed on from him. Thus most of the people giving legal opinions were unaware of these types of hadiths. This generation of scholars had available to them the reports of the jurists of each city who were Companions and Successors, for before their time a person had only been able to collect the hadiths of his city or as-sociates. Those before them had relied for knowing the names of the transmitters and the degree of their reliability on what was available to them based on situational and circumstantial evidence. This generation went deeply into this discipline (of biography) and made it a distinct field for recording and investigation. They debated the rulings of hadith soundness, etc., so that through this putting in writing and debate there were disclosed to them things which had previously been unknown in terms of the hadith going back uninterruptedly to the Prophet or being interrupted. Sufyan, Raki` and ones like them had made the greatest efforts but had only been able to find less than one thousand uninterrupted hadith going back to the Prophet, as Abu Dawad al-Sijistani mentioned in his letter to the people of Mecca, while the people of this genera-tion transmitted about forty thousand hadiths.

It is true that al-Bukhari condensed his sahih to six thousand hadiths and that Abu Dawad limited his Sunan to five thousand, and that Ahmad made his Musnad a standard by which to recognize the hadith of the Messenger of God, may the peace and blessings of God be upon him. Thus, whichever hadith is found in the Musnad, even if reported by one chain could be valid, and if not, it would have no validity. The chief hadith scholars of this generation were Abd al-Rahman ibn Mahdi (813), Yahya ibn Sa`id al-Qattan (813), Yazid ibn Harun (736), `Abd al-Razzaq (827), Abu Bakr ibn Abi Shaiba (849), Musaddad (ibn Musarhad (843), Hannad (ibn al-Sarid, 857), Ahmad ibn Hanbal (855), Ishaq ibn Rahawayh (852/3), al-Fadl ibn Dakain (748), 'Ali al-Madini (849) and their peers, and this generation was an excellent model for the subsequent generations of hadith scholars.

The researchers among them, after mastering the discipline of hadith transmission and recognizing the ranking of hadith, next turned to jurisprudence. They didn't hold the opinion that people should agree to perform taqlid of a person who had gone before due to the fact that they observed that each of these schools contained contradictory hadith and reports. Thus they took up evaluating the Prophet's hadith and the reports of the Companions, Successors and *Mujtahids* according to rules which they themselves established—and I will explain to you in a few words what these principles are.

1) They held that if there were found a conclusive Qur'anic verse pertaining to an issue, it was not permitted to turn from this to something else.

2) If the Qur'an could support various interpretations then the sunna would be used to rule on the issue.

3) If they didn't find (the answer to an issue) in the Divine Book they used a sunna of the Messenger of God, may the peace and blessings of God be upon him, whether it was abundantly reported, current among the jurists, known only to the people of a certain region or family, or reported through a particular chain of transmission, and whether the Companions and jurists implemented it or they did not.

4) When there existed a hadith about the issue they wouldn't follow any report from the Companions or any ijtihad of a scholar which opposed it.

5) Once they had concluded their efforts in tracing the hadiths and had not found any hadith relevant to the matter, they would accept the opinions of a group of the Companions and Successors and not restrict themselves to one group to the exclusion of another or one region to the exclusion of another, as those before them had done.

6) If the majority of the Caliphs and Jurists had agreed on something, they accepted this, and

7) If they disagreed they would accept the saying of the one who was the most knowledgeable and pious, or the most accurate or the one who was most well-known among them.

8) If they found a matter in which two opinions held equal force this was, considered an issue in which both could be held to be valid.

9) If they were unable to do even this then they would look attentively into what is generalizable from the Qur'an and the sunna, their referents by way of allusion, and what they logically entail, and they would bring parallel cases to bear on the issue in order to respond when these two cases were obviously close to each other.

In this they did not rely on principles of legal theory but on what could be arrived at through pure human understanding and what would assure the heart, just as the standard of concurrent traditions (tawatur) is not the number of transmitters, nor their status, but rather the certainty in the hearts of people which follows hearing the report, as we have previously recounted concerning the status of the Companions of the Prophet.

These principles were derived on the basis of the practice of the first generations and their pronouncements. It is reported from Maimum ibn Mihran (734) that he said, "Whenever a dispute was laid before Abu Bakr he used to consult the Book of God, and if he found something in it by which to adjudicate among them he judged by it, and if it wasn't in the Qur'an and he knew of a sunna from the Messenger of God, may the peace and blessings of God be upon him, pertaining to the matter, he judged by it, and if he failed in this he would go out and ask the Muslims, saying, "Such and such a case has been referred to me, so do you know if the Messenger of God, may the peace and blessings of God be upon him, had made any judgment on this?" Thus sometimes all of the people would gather around him mentioning a judgment from the Messenger of God, may the peace and blessings of God be upon him about this, and then Abu Bakr would say, "Praise be to God, who put among us those who have preserved reports of our Prophet." If he failed to find a sunna of the Prophet, may the peace and blessings of God be upon him, about it he would gather the pious and reliable people and the best among them and he would consult them. Then if their opinion concurred on a matter he would judge according to this.

It is reported from Shuraih that `Umar ibn al-Khattab wrote to him, "If you find something in God's book judge according to it and don't let others divert you from this, and if something arises which is not in God's book, then look at the practice (sunna) of the Prophet, may the peace and blessings of God be upon him, on it and judge on the basis of this. If there arises something which is not in God's book and neither is there a sunna of the Prophet, may the peace and blessings of God be upon him, about it, then consider what people have concurred on, and act on this. If there arises something which is not in God's book, nor covered by any sunna of the Prophet, may the peace and blessings of God be upon him, nor has any one before you discussed it—then choose either of two courses of action. If you wish to do independent reasoning (ijtihad) based on your own opinion, and proceed thusly, then pro-ceed. If you wish to leave it aside, then leave it aside and I consider leaving it aside as nothing but good for you."

From `Abd Allah ibn Mas`ud it is reported that he said, "A time has come for us in which we do not judge nor are we capable of judging. God has decreed that we should arrive at this (situation) which you see. Thus, whoever is presented with a case to judge after this time, should rule on it based on what is in the book of God, may He be Great and Exalted, and if something comes up which is not in the book of God then he should rule on it based on what the Prophet, may the peace and blessings of God be upon him, ruled. If something comes up which is neither in God's Book, nor did the Prophet, may the peace and blessings of God be upon him, rule on it, then he should judge according to what the righteous ones did (i.e., by ijma), and he should not say, 'I am afraid', or 'I hold the opinion', for, 'the forbidden is clear and the permitted is clear, and between them are ambiguous matters—so leave aside what you are dubious about in favor of that in which you have no doubt.”

Ibn 'Abbas, when asked about a matter, informed about it if it was in the Qur'an, and if it was not in the Qur'an but was ruled on by the Prophet, may the peace and blessings of God be upon him, he related it, and if not, then he related what Abu Bakr and `Umar had ruled, and if not, then he gave his own opinion about it.

It is reported from Ibn `Abbas, "Don't you fear that you will be punished or be made to sink into the ground for saying, 'The Prophet, may the peace and blessings of God be upon him, of God said such and such, and some person said ...'" Qutada said, "Ibn Sirin recounted to a man a hadith from the Prophet, may the peace and blessings of God be upon him, then that man said, 'so and so said such and such a thing.'"Then Ibn Sirin said, 'I tell you a hadith from the Prophet, may the peace and blessings of God be upon him, and you said, 'so and so said such and such a thing! ", Al Auza’i"said, "`Umar ibn `Abd al-Aziz gave an order that no one could give personal opinions about what was in the Qur'an and the leaders of the legal schools could only give opinions concerning things which the Qur'an had not revealed, nor had a sunna of the Prophet been transmitted about them, nor could anyone hold their own personal opinion about a matter for which there existed a sunna of the Prophet. Al-A`mash said "Ibrahim (al-Nakha’i) used to say that the muqtadi should stand on the left (of the prayer leader), then I related to him a hadith from Sami' al-Ziyat from Ibn 'Abbas, that the Prophet, may the peace and blessings of God be upon him, set him (Ibn 'Abbas) on his right side, so Ibrahim adopted this."

Al-Sha`bi reported that a man had come to him asking about an issue so that he replied that Ibn Mas'ud had said such and such a thing about it. The man then said, "Tell me your opinion about it." Al-Sha’bi said, "Aren't you amazed at this person, I told him what Ibn Mas’ud said and he asked about my opinion. My religion is more important to me than that! By God, I would rather burst into song than inform you on the basis of my opinion." Al-Darimi gathered all of these reports.

Al-Tirmidhi reported from Abu al-Sa'ib who said, "We were at Waki's and he said to one of those persons who had the habit of giving his own opinion, 'the Prophet of God, may the peace and blessings of God be upon him, used to practice ishar. Did Abu Hanifa hold that it (ish`ar) is mathla?' The man said, 'It had been reported that Ibrahim al-Nakha’i said, "Ish’ar is the same as mathla."' Then (Abu Sa'ib) related, "I saw Waki′ get very angry and he said `I tell you that, "the Prophet of God, may the peace and blessings of God be upon him, said" and you say "Ibrahim said". It's better that you should be imprisoned and not set free until you repudiate what you have just said."

It is reported that (Abd Allah ibn 'Abbas, `Ata, Mujahid and Malik ibn Anas, may God be pleased with them, used to hold that except for the Prophet of God, may the peace and blessings of God be upon him, there was no one whose speech could not either be accepted or refuted.

In summary, once (the scholars) had laid out jurisprudence according to these principles there remained no issue among those that had been previously discussed nor among those that had come up in their era but that they had found a hadith pertaining to it, whether going back uninterruptedly to the Prophet (marfu`), having all transmitters mentioned (muttasal), being interrupted at the level of a Companion (mursal), or the statement of a Companion (manqul), whether sound, good, or being worthy of being considered, or that they had found a statement of Abu Bakr or Umar, or the other caliphs or the judges of the early Islamic garrison cities and the legists of the (early) regions or an inference (istinbat) through a generalization, allusion, or entailment. In this way, Allah facilitated implementing the sunna for them. The highest of the scholars in dignity, the one who transmitted hadith most extensively, the most knowledgeable of the ranking of hadiths, and the most astute in jurisprudence was Ahmad ibn Hanbal, then Ishaq ibn Rahwayh.

The organization of jurisprudence along these lines thus depended on collecting a great number of hadiths and accounts to the point that Ahmad (Ibn Hanbal) was asked if (knowing) 100,000 hadith would suffice a person to be able to give a legal opinion. He replied, "No," until the number 500,000 hadith was suggested. Then he said, "I hope so." This is quoted thus in Ghaya al-Muntaha. He meant that this basis (would suffice for) giving fatwas.

Then God brought forth a later generation who observed that their predecessors had spared them the trouble of gathering hadiths and laying out jurisprudence on their foundation, so they were free to turn their attention to other disciplines such as singling out those sound hadiths concurred on by the great masters of the hadith scholars such as Zaid ibn Harun, Yahya ibn Sa′id al-Qattan, Ahmad, Ishaq and ones like them; collecting the legislative hadith upon which the jurists of the garrison towns and the ulema of the early regions had built their legal schools; as well as ruling on each hadith according to its merits such as the anomalous (shadhdha) and singly transmitted (fadhdha) hadiths which the earlier reporters had not transmitted, or following up their lines of transmission that earlier scholars had not traced in which there might be found an uninterrupted connection to the Prophet or an elevated chain, or the transmission from one juristic expert to another jurist, or from one memorizer to another and so on with this type of technical topic. These ones are al-Bukhari, Muslim, Abu Dawad, `Abd ibn Humayd (863), al-Darimi, Ibn Majah, Abu Ya`la (1066), al-Tirmidhi, al-Nasal, al-Daraqutni, al-Baihaqqi, al-Khatib, al-Dailami, and Ibn `Abd al-Barr (1070) and their like. In my opinion, the ones among them who are the most famous, the most knowledgeable, and whose writings are the most useful, are four, approximately contemporary to one another.

The first of them is Abu `Abd Allah al-Bukhari (870) whose goal was sorting out the sound, abundantly transmitted hadith which went directly back to the Prophet from the others, and inferring from them jurisprudence, prophetic biography and Qur'an interpretation. Thus he compiled his collection, al-Sahih, remaining faithful to his conditions. We heard that a pious man saw the Prophet of God, may the peace and blessings of God be upon him, in a dream and he said, "What's wrong with you that you have become preoccupied with the jurisprudence of Muhammad ibn Idris (al-. Shafi`i) and gotten away from my book." He asked "O Prophet of God, what then is your book?" He replied, "Sahib al-Bukhari." By my life it has achieved fame and acceptance to a degree beyond which none could possibly aspire.

The second of them is Muslim al-Nisapuri (875), who aimed to isolate those sound hadith which hadith scholars had agreed upon, which were uninterruptedly transmitted from the Prophet, and from which the Prophetic sunna could be inferred. He wished to popularize them and facilitate the inference of jurisprudence from them. Thus he did an excellent job of organizing them, assembling the chains of transmission of each hadith in one place so as to clarify as fully as possible textual variants and the branches of the lines of transmission, and he correlated the variants so that there remains no excuse for the person who is cognizant of the Arabic language in turning away from the sunna to something else.

The third of them is Abu Dawad al-Sijistani (889) whose concern was with collecting the hadiths in which jurists found the indicants (istadalla) for rulings and which were current among them and on which were founded the rulings of the ulema of the early cities. To this end he compiled his Sunan collecting in it the sound, good, without defect (lin), and proper to be implemented (salih l-il ʻamal) hadith. Abu Dawad said, "I did not cite in my book any hadith which people had agreed to leave aside." He exposed the weakness of any weak hadith among them, and whichever of them contained a deficiency, he explained this in a way that the expert in hadith studies would understand, and he explained in the case of each hadith whatever (ruling) a scholar had deduced from it, or whichever opinion a knowledgeable person had based on it, and therefore al-Ghazzali and others have stated that his book would suffice for the legal scholar doing independent reasoning (mujtahid).

The fourth of them is Abu `Isa al-Tirmidhi (892), and it's as if he perfected the method of the two shaikhs (Bukhari and Muslim) insofar as they clarified and did not obscure, and the method of Abu Dawad insofar as he collected everything on which an opinion had been given. Thus he combined each of the two methods and added to them the explanation of the methods of the Companions, Successors, and jurists of the early garrison towns. He compiled a comprehensive book and elegantly abridged the hadith chains. Thus he would cite one chain while pointing out what he had omitted and he explained the status of each hadith in its being sound, good, weak or undetermined, giving the reason for defectiveness so that the student of hadith would be informed concerning its status and recognize those hadith which could properly be taken into consideration from those which could not. He also indicated whether a hadith was transmitted by a wide variety if persons or by a single narrator, and he mentioned the schools of the Companions and Jurists of the early Islamic cities, giving the first names when necessary and supplying the kunyas if necessary. He left nothing hidden from the knowledgeable person and therefore it is said that his book suffices the mujtahid and is more than enough for the muqallid.

In contrast to these persons there was in Malik's and Sufyan's time and after them a group of people who were not reluctant to delve into the issues, nor did they fear giving legal opinions and they held that jurisprudence was the foundation of religion so that it must become widespread. They rather feared the transmission of Prophetic hadith which were being made to reach back to him, such that al-Sha`bi said, "We prefer (a hadith) going back to someone other than the Prophet, may the peace and blessings of God be upon him, for if there is any addition or deletion from it involves someone other than the Prophet, may the peace and blessings of God be upon him." Ibrahim (al-Nakha'i) said, "I say, that "Abd Allah said,' and "Alqama said,' is preferable according to us." When Ibn Mas'ud related hadith which he had heard from the Prophet his face streamed with tears and he said, "(He said) exactly this or something along these lines, and so on." `Umar said when he sent a group of the Ansar to Kufa, "You are going to Kufa to a people who weep when they recite the Qur'an so they will come to you saying 'the Companions of Muhammad have arrived, the Companions of Muhammad have arrived.' Then they will come to you and ask you about hadith so try to be sparing in giving reports from God's Messenger, may the peace and blessings of God be upon him." Ibn 'Aun (933) said, "When al-Sha`bi was presented with an issue he was cautious, and Ibrahim used to expound on it at great length." Al-Darimi reported these accounts. In short, the writing down of hadith, jurisprudence, and specific legal issues occurred due to their need for another approach and this was because the ulema did not have enough hadith reports and accounts from the Companions to suffice in inferring (istinbat) jurisprudence according to the principles which the People of the Hadith had chosen. They did not take pleasure in studying the pronouncements of the religious scholars of the (various) regions, collecting and investigating them, for they considered this to be a dubious method. They believed, however, that their leaders (Imams) were at the highest level of inquiry and they were very much biased toward their colleagues and `Alqama said, "Was anyone among them (the Companions) more reliable than `Abd Allah (ibn Mas'ud)?" and Abu Hanifa said, "Ibrahim has more legal acumen than Salim, and if not for the virtue of being a Companion I would have said, "`Alqama has more legal acumen than Ibn 'Umar. They were astute, intuitive, and quick in shifting the intellect from one thing to another which enabled them to deduce the answer to issues based on the pronouncements of their teachers. "For everyone will find it easy to do that for which he was created.' Each sect rejoicing in its own tenets."

Thus they laid out jurisprudence on the principle of derivation (takhrij) which is as follows.

Each jurist memorizes the book of the one who was the spokesman for his associates and the most knowledgeable of the group's pronouncements and the most correct in examining its preference of opinions (tarjih) so that in each case he takes into consideration the interpretation of the ruling.

Whenever he is asked about a matter or needs some information he will look into the pronouncements of his associates which he had memorized in case he finds the answer there, and if not:

1) He will examine the generalization of their sayings so as to make the matter conform to this form.

2) He will take into account an indication implicit in the statement so that he can infer the response on the basis of this.

3) Sometimes there may be an allusion (ima) or iqtida (logical entailment) of certain statements from which the intent can be understood.

4) Sometimes the stated issue may have a parallel instance to which it can be referred.

5) Sometimes he can look into the reason for legislation (illa) of the ruling which has been stated through derivation (takhrij), simplification, or ellipsis so that its ruling can be applied to a case other than what had been originally been pronounced upon.

6) Sometimes there would be two statements about a case which if combined according to the format of a conjunctive syllogism (qiyas iqtirani) or hypothetical syllogism (sharti) will produce the answer to the issue.

7) Sometimes there would be in their statements a thing known through pattern and category but not through a comprehensive exclusive definition, so that they would have recourse to the linguistic experts and take pains to establish its essential properties, in order to determine its comprehensive exclusive definition, settle its ambiguities, and distinguish its problematic aspects.

8) Sometimes their sayings might have two possible interpretations so they would attend to establishing preference for one of the possibilities.

9) Sometimes the mode of argumentation of the proofs (taqrib al-dala'il) for the issues would be obscure so that they would elucidate this.

10) Sometimes certain of those using the methods of derivation would make (legal) deductions based on the action of the founders of their school, or upon their remaining silent, and so on.

It may be said of all of these forms of derivation that "the opinion derived from such and such a person is thus," or "it is said according to the school of so and so," or "according to the principle of so and so," or "according to the opinion of so and so"—"that the response to the question is such and such." Those ones (who practice legal derivations in this manner) are termed "those exercising legal reasoning (mujtahids) within a legal school." A per-son who holds that whoever memorizes the Mabsut is a mujtahid, even if he has no knowledge at all about hadith transmission, nor even knowledge of one hadith is referring to this type of ijtihad according to this principle. Thus the process of derivation took place in every school, and proliferated. The school which had famous members who became judges and givers of legal opinions, whose writings became well-known among people and who taught openly, spread to all regions of the world, and still continues to spread all the time. The school which had undistinguished members who were not entrusted to judge and give fatwas, and who were not liked by people, died out after a time.

CHAPTER-X

An Account of the Condition of People Before the Fourth Century and After

You ought to know that during the first and second centuries peo-ple did not unanimously follow any particular madhhab. Abu Talib al Makki (d. 996) said in his Qut al-Quliib, "Books and compila-tions are all later developments, as is holding to the statements which people have made, giving legal opinions based on the school of a single individual, holding to his opinion, emulating him in every thing, and conducting jurisprudence according to his school. This was not the way of the people who preceded us in the first and second centuries."' I hold that some amount of making legal derivations (takhrij) had arisen after the first two centuries, although the people of the fourth century were not agreed on the absolute imitation (taqlid) of the school of a single person and conducting jurisprudence according to it and emulating his opinion, as will be clear from the following exposition. Rather among them were the religious scholars and the common people. In cases involving consensual issues about which there was no disagreement among the Muslims and among the majority of the mujtahids, the common people only performed taqlid of the master of legislation (the Prophet). They used to learn the manner of ablution, full bath, prayer, zakcit and so on from their forefathers or the teachers of their cities—and they acted according to this. If some uncommon situation arose they would ask for a legal opin-ion about it from whichever mufti they found without specifying a legal school.

It was a trait of the specialists that the People of the Hadith among them were deeply involved with hadith scholarship so that they possessed hadiths of the Prophet, may the peace and blessings of God be upon him, and traditions of the Companions besides which nothing else would be required for (deciding) the issue, and abundantly transmitted hadith and sound hadith which had been implemented by some of the jurists, due to which there is no excuse for not acting upon them. Or (they had available) publicly declared opinions of the majority of the Companions and Successors which may not properly be opposed. If a person still didn't find any answer to the issue which would satisfy him due to conflicting transmissions and lack of clear preference (for any one over the other), and so on, he could refer to the discussion of one of the past jurists. Then if he found two opinions he could choose the more reliable of them, whether it came from the people of Medina or Kufa. Those among them who were People of Legal Derivations (ahl al-takhrij) carried this out in cases where they found no clear pro-nouncement (masrah) (about an issue) and they used independent reasoning within a school and became affiliated with the school of a certain person so that it was said, "So and so is a Shafici," and, "So and so is a Hanafi." Even one of the People of the Hadith might become associated with a legal school due to his usually concurring with it, for example al-Nasa'i and al-Baihaqqi who were referred to as Shaficis. Thus the positions of giving judgments and fatwas came to be entrusted only to mujtahids and only mujtahids were called jurists.' Then following these centuries other people veered off to the right and left and new developments took place. 1) Among them were dispute and disagreement in jurisprudence. The elaboration of this, based on what al-Ghazzali said, is that when the era of the Rightly Guided Caliphs came to an end the Caliphate passed to people who held it illegitimately. They were not self-reliant in the science of giving fatwas and the (shari` a) rulings, thus they were forced to ask for assistance from jurists and to associate with them in all circumstances. A remnant of the scholars were faithful to the original mode and held to the purity of the religion. Thus if they were sought after they fled and shunned (the sultans). Thus the people of those times saw the greatness of the scholars and the interest of the leaders in them despite their avoidance of them (the sultans). Later the scholars abandoned (this) refusal and pursued knowledge in order to gain access to achieving honors and attaining high rank. Thus the jurists went from being sought after to becoming the seekers, and they went from having been dignified by their avoid-ing the sultans to being despicable in their running after them, except those ones whom God made successful (in their resolve). Even before them, persons had compiled works in theology and multiplied the (scholastic) questioning and answering, objecting and responding, and laying the groundwork of argumentation. This had already made an impression on them before the time when some of the officials and kings became disposed toward debates about jurisprudence and determining the primacy between the schools of al-Shafi`i and Abu Hanifa, may God have mercy on him. After that people abandoned theology and the disciplines of knowledge of the religious sources (`am) and became interested instead in contentious issues, in particular those between al-Shafil and Abu Hanifa, may God be pleased with him, while they were tolerant of the disagreements among Malik, Sufyan, Ahmad ibn Hanbal and others. They claimed that their goal was deducing the finer points of the religious law and determining the reasons for legislation according to the legal school and laying out the principles of legal opinions. Thus they multiplied the compilations and deductions concerning this and they schematized the types of disputations and classifications and they persist in this until today. We don't know what God the Exalted will decree in later times. (End of the gist of what al-Ghazzali said.)4 2) Among them are that people came to depend on taqlid, and this taqlid slowly crept into their hearts while they remained unaware of it. One reason for this was competition among the jurists and their disputing among themselves, so that when competition in giving legal opinions occurred among them, whoever gave a fatwa about something was contradicted about that fatwa. He then replied to this so that the discussion was not brought to a conclusion except through recourse to the pronouncement of someone who had given a verdict on the issue in an earlier era. An additional reason for taqlid was the injustice of the judges, for once most of the judges had become unjust and were no longer reliable, only that on which the common people did not cast doubt was accepted from them, i.e., something which had been ruled on previously. An additional reason was the ignorance of the leaders of the people, and people's asking opinions from those with neither knowl-edge of the hadith nor of the method of deductive inference, as you may observe apparent in most of the recent ones. Ibn al-Humam and others warned about this. At that time non-mujtahids began to be called jurists.5 3) Most of them began to be over-specialized in each discipline so that some claimed to have laid the foundation of the discipline of knowing the hadith transmitters Cum al-rijetl) and recognizing their ranks in being reliable or unreliable (jarh wa to' dil). Then they would go on from this to ancient and recent times. Among them were ones who sought out the unusual and rare reports even if they lay within the scope of fabrication. Among them were ones who increased the argumentation concerning the roots of juris-prudence and each deduced in support of his peers principles of argumentation, so that he posed an issue, then exhausted it, re-sponded, sought its conclusion, defined, classified, and edited, some-times lengthening the discussion and at other times condensing it. Some of them began to concoct remote instances which were not worthy of the attention of a reasonable person and they liked the generalizations and allusions in the discussions of the legal interpreters and those of a lower rank, to whom neither the knowl-edgeable person nor the ignorant one would care to listen. The harmfulness of this disputation, disagreement, and hair-splitting was close to that of the first crisis (of the Muslim community) when people quarreled over rulership and took up sides. Just as the former resulted in a tyrannical rulership and events of severity and folly—similarly these latter (disputes) led to ignorance, inter-polations, doubts, and conjecture from which there is no hope of deliverance. Subsequent to them generations arose who relied purely on taqiid, neither distinguishing the true from the false nor the argument from the inference (istinbat). The faqih of this time was a prattler and wind-bag who indiscriminately memorized the opin-ions of the jurists whether these opinions were strong or weak, and related them in a loud-mouthed harangue; and the hadith scholar (muhaddith) became a person who counted up the hadiths whether sound, faulty, or nonsensical, and recited them quickly like an entertainer, flapping his jaw full-force. I don't say that this is so in all cases, for God has a group of His worshippers unharmed by their failure, who are God's proof on His earth even if they have become few. No time has come after that except that the crisis has increased and taqlid has become more prevalent, and integrity has become more and more absent from people's hearts until they have become content to leave off examining religious matters and so that they say, "We found our fathers following a community and we follow in their footsteps."6 The complaint may be raised to God and He is the one to turn to for help. He is reliable and our trust is in Him.

Subsection

At this point people should be alerted to issues in whose deserts the intellects went astray, the feet stumbled and the pens blotted. 1) Among them are that (in the case of) these four schools which have been recorded and formulated—the community has agreed, or those whose opinions are worth considering among them have agreed—on the permissibility of performing taqlid of them up until our time. In these are benefits which are not concealed—especially in these days in which people's endeavors fall very short, their hearts have become of self-seeking and everyone delights in his own opinion.' Ibn I-jazm said, Taqlid is forbidden, it is not permitted for anyone to follow the opinion of someone other than the Prophet of God, may the peace and blessings of God be upon him, without proof, due to God's, may He be Exalted, saying, "Follow what was revealed to you from your Lord and do not follow guardians besides Him," (7:3) and "If it were said to them obey what God has revealed to you, they say rather we obey what we found our ancestors doing." (2:170), (God) said in praise of the ones who don't perform taqlid, "Give good news to my worshippers who hear advice and follow the best of it. Such are those whom Allah guides, and such are those possessed of understanding." (39:17-18) And He said, may He be exalted, "If you disagree among yourselves about something refer it to God and the Prophet if you believe in God and the Last Day." (4:59)

Thus God, the Exalted, in time of dispute did not allow reference to anyone besides the Qur'an and sunna. In this (Qur'anic verse) He forbade referring in time of dispute to any person's opinion because it is not the Qur'an or sunna. The consensus of all of the Companions, from the first of them to the last, and the consensus of the Successors from first to last, confirmed the refusal and interdiction of any one of them from imitating the opinion of any contemporary or preceding person, so that he accepts it totally.

Therefore it should be known that whoever follows the totality of Abu Hanifa's, al-Shafi's or Ahmad's opinions, may God be pleased with them, and does not leave aside any opinion of a follower of theirs, or of anyone else in favor of that of someone else, and does not rely on what is in the Qur'an and the sunna without submitting it to the opinion of a particular person—this person has surely and indubitably opposed the consensus of the whole Muslim community from its beginning to its end and he will not find any pious elder or person among all of the three praiseworthy first generations (in agreement with him). Therefore he has chosen a path other than that of the believers. We take refuge with God from this position.

In addition, all of these jurists forbade taqlid other than the imitation of the pious ancestors, thus whoever follows these jurists contravenes their own prohibition. Also, what is it that could make a person among them (the founders of the legal schools) or anyone else, more worthy of being imitated, than say, `Umar ibn al-Khattab, 'Ali ibn Abi Talib, Ibn Mas`ud, Ibn `Umar, Ibn 'Abbas or `A'isha, mother of the believers, may God the Exalted be pleased with them—for if taqlid were permitted then each one of these people would be more worthy of being imitated than anyone else. This statement (of Ibn Hazm) applies to any person who has some inkling of ijahad even if only in one issue, and to whomever it is clearly apparent that the Prophet, may the peace and blessings of God be upon him, commanded one thing and forbade another, and that it is neither abrogated by tracing the hadiths and the opposing and concurring opinions about the issue nor by finding anything abrogating them—nor by seeing a large group of those scholars steeped in learning acting upon it, for he sees that the one who opposes it has no proof other than analogical reasoning, deduction, or something like this.

In this case there is no reason for opposing a hadith of the Prophet, may the peace and blessings of God be upon him, except concealed hypocrisy or overt stupidity. This is what Shaikh 'Izz al-Din ibn `Abd al-Salam meant when he said, It is one of the most amazing wonders that one of the jurists who practices taqlid agrees on the weakness of something taken from his Imam because there is found no defense for its weakness, while in spite of this he imitates his (the Imam's) decisions about it and ignores the one whose opinion is attested to by the Book, sunna, and sound analogies—rigid in his adherence to practicing taqlid of his Imam. Indeed he concocts things which oppose the manifest mean-ing of the Book and the sunna, and exegetes them by remote esoteric interpretations in defense of the person he imitates. He (further) said, People always used to ask (opinions from) whichever scholar they happened to run across without being restricted to a legal school, and without rebuke to any questioner, until these legal schools appeared and those who were prejudiced in their favor among the ones who practiced taqlid. Thus one of them would follow his Imam despite the remoteness of his opinion from textual justification (adalla), imitating him in what he held as if he were a messenger sent from God—and this is far removed from the truth, far from what is correct, and unacceptable to any reasonable person.

Imam Abu Shama said, “It is incumbent upon one who engaged in jurisprudence not to confine himself to the school of one Imam, and that he should hold in every issue the soundness of what is closer to the indication (dalala) of the Qur'an and the established practice of the Prophet (sunna mahkama). This will be easy for him if he is well-versed in most of the traditional disciplines. Let him avoid partisanship (to a school) and studying the recent modes of disagreement for these are a waste of time and will disturb his serenity. It is confirmed that al-Shafi’i forbade performing taqlid of himself or anyone else. His associate al-Muzani said at the beginning of his Mukhtasar, I summarized this book of al-Shafil's teaching and the meaning of his opinions in order to make it available to whomever wishes, while I apprise him of his (al-Shafi’I’s) forbidding performing taqlid of himself or of any other, so that this person should study it for the sake of his religion and should take care—i.e., I admonish whoever wishes to study al-Shafi’i's teaching, that he himself forbade taqlid of himself or anyone else. (lbn Hazm's saying applies to) the person who is not learned and follows a particular one of the jurists believing that no one like him could err and that what he said must definitely be correct, and who has secreted in his heart not to leave off following him even if a proof opposing him would come to light. (On this point) there is what al-Tirmidhi reported from 'Adi ibn Hatim—that he said, "I heard him, i.e., the Prophet of God, may the peace and blessings of God be upon him, reciting this verse, "They took their rabbis and monks as Lords besides Allah." The Prophet said, "They didn't used to worship them, rather if these ones permitted something for them, they considered it to be permitted; and if they forbade a thing they forbade it."

As (it applies) to the one who does not allow a Hanafi, for example, to ask for a legal opinion from a Shafii jurist and vice versa, and does not allow a Hanafi to follow Imam Shafii for example, this person has opposed the consensus of the early generations and contradicted the Companions and Successors. This statement (of Ibn Hazm) does not apply to the one who obeys only the sayings of the Prophet, may the peace and blessings of God be upon him, and only considers permitted what Allah and his Prophet made permissible, and only considers forbidden what God and his prophet have forbidden. However if he doesn't have information about what the Prophet, may the peace and blessings of God be upon him, said, neither by way of correlating conflicting statements about what he said, nor by means of deduction from his saying, he may follow a rightly-guided learned person provided that he is correct in what he says, and that he gives a clear legal opinion clearly based on the sunna of the Prophet, may the peace and blessings of God be upon him. Then if this person should oppose what he thinks (to be correct) he should part company with him immediately without dispute and insistence. For how can anyone condemn this, when asking for legal opinions and giving them has gone on among Muslims since the time of the Prophet, may the peace and blessings of God be upon him, and there is no difference between always asking the same person for legal opinions and asking that person on some occasions and another person at other times, once what we have agreed on what was mentioned above. How can this be gainsaid when we don't believe that a jurist, whoever he may be, received jurisprudence through Divine revelation, and that God made obeying him obligatory upon us, and that he is infallible. Thus if we follow a jurist, this is due to our knowing that he is knowledgeable concerning God's book and the sunna of His Prophet, and that his opinion must either be based on a pronouncement of the Qur'an or the sunna or be deduced from them through some variety of deductive apparatus or that he knows from the context that the ruling (hukm) in a certain case is contingent on a particular cause for legislation (`illa) and his heart is confident in this recognition. Thus he draws analogies from some-thing which is textually revealed to what is not stated in the revealed texts and it is as if he were saying, "I believe that the Prophet of God, may the peace and blessings of God be upon him, would say, 'Whenever I find this reason for legislation ((Ma) present then the ruling (hukm) in the case will be thus'"—and the analogized thing is gradually obtained through these generalizations, so that this also is ascribed to the Prophet, may the peace and blessings of God be upon him, but in this method there are conjectures (zunun).

If this were not so then no believer would follow a mujtahid, since if a hadith from the infallible messenger whose obedience God made obligatory upon us reached us by a correct chain of transmission, indicating something which conflicted with his (the mujtahid' s) opinion and we were then to ignore the hadith in favor of obeying that guesswork—who would be more evil than us, and what would be our excuse on the day when people will stand before the Lord of the Worlds?'

2) Among these (difficult issues) is making derivations (takhrij) according to the statements of the jurists and following the literal meaning of the hadith. Each has a fundamental basis in the religion, and in each era researchers among the ulema have employed each of them. Among them there have been those who minimized one of them and emphasized the other, and vice versa. Thus it is not suitable to neglect one of them entirely as did the majority of the factions. Rather the pure truth is to correlate one with the other and to compensate for the defects of each through the other. This is the opinion of Hasan al-Basri, "Your practice, by God, besides Whom there is no other God, should lie between the two—between the excessive and the deficient." Thus, he who is one of the People of the Hadith must subject what he selects to critical examination and uphold it against the opinion of the mujtahids among the Successors, while whoever is one of those using deductive reasoning (takhrij) must make something part of his methods (sunan) only while taking care that it cannot oppose the sound obvious hadith, and while guarding himself against speaking from personal opinion in a case about which there exists a hadith or report from a Companion, insofar as he is able.

The hadith scholar (muhaddith) does not have to be over-scrupulous about observing the principles which his associates established for which there are no textual stipulations of the law-giver, so that through this he would reject a sound hadith or analogy, such as the rejection of whatever has the least flaw in reaching back to the Prophet or being uninterrupted. Ibn Hazm did this when he rejected the hadith forbidding musical instruments due to a suspicion of a break in the transmission of al-Bukhari, despite the fact that on its own the hadith was soundly connected to the Prophet. Rather, one should have recourse to something like this only in the case of another conflicting report. Another case is the hadith scholars' saying, "So and so preserved more hadiths of a certain person than someone else, so we prefer his version to the hadith of the other for this reason"—even if there were one thousand reasons for preferring the other's version. The concern of the majority of hadith transmitters when transmitting the meaning of the hadith was with expressing the essentials of the meanings, not the (precise) expressions which are recognized by those experts in the Arabic language. Thus they drew inferences from things like the "fa" or the "waw" and one word preceding or coming after another and other sorts of hair-splitting. Often another transmitter will express this same narration, replac-ing one word instead of another. The truth is that whatever the transmitter reports should be literally taken as the speech of the Prophet, may the peace and blessings of God be upon him, then if another hadith or evidence comes to light it must also be taken into account. The person using deductive methods should not deduce a meaning which his peers would not find conveyed by the same expression and which neither native speakers nor scholars of the language would understand from it. Nor should he derive an opinion based on identifying the reason (takhrij al-manat) for leg-islation in a case where judgment was pronounced for no apparent reason, or applying a parallel case to it about which the interpreters disagree and opinions contradict each other, for if his associates had been asked about this issue perhaps they would have drawn a parallel to a parallel instance which would exclude it, or perhaps they would have cited a reason for legislation (cilia) other than that which he himself derived. In fact, derivation is only permitted because it is a form of following (taqlid) of a mujtahid and it is only effected based on what may be understood from his statement. He must not reject a hadith or report of a Companion on which the Muslims have agreed in favor of a principle which he himself or his peers derived, such as in the case of the hadith of the milk-giving camels, or like the annulment of the share of those with a relationship. Indeed, taking account of the hadith is more necessary than caring about this derived principle and this is what al-Shafi'i meant when he said, "In the case when I have held something or established it as a principle, if there should later come to your attention some saying of the Prophet, may the peace and blessings of God be upon him, conflicting with what I said, then what he, may the peace and blessings of God be upon him, said, must be upheld."

3) Among the (difficult issues) is that the investigative study of the Qur'an and the sunna for the purpose of recognizing the shari'a rulings is at various degrees.

A) The highest of them is achieved by a person through actually knowing the rulings or virtually knowing them, which enables him to usually give an answer to the ones asking for legal opinions about certain circumstances insofar as his answer usually concerns some matter about which there is agreement. This is what is specified by the designation "ijtihad."

B) This ability (to perform ijtilzad) is sometimes achieved through scrutinizing all of the reports and studying all of the anomalous and exceptional ones among them as Ahmad ibn Hanbal indicated; together with the recognition of the referents of the speech in such a way that the rational person who knew the language would concur, as well as mastery of the knowledge of the reports of the pious ancestors through collating the discrepancies and organizing the inferences, and so on.

C) Sometimes the ability to perform ijtihad is acquired by becoming expert in the method of derivation (takhrij) according to the legal school of one of the authorities in jurisprudence, together with knowing a sufficient body of prophetic sunnas and reports from the Companions, so that he can know that his opinion does not oppose the consensus, and this is the method of those who use derivation.

D) The middle level of study draws on both methods in that he acquires a knowledge of the Qur'an and sunna which will enable him to recognize the preeminent issues of jurisprudence that have been agreed on together with their detailed proof texts (adilla tafsiliyya). He should have achieved as well the highest degree of knowledge of certain issues of ijtihitd through knowing about their proof texts (adilla), the preference of certain opinions over others, the criticism of derivations, and recognizing the correct from the false. Even if he has not perfected the critical apparatus to the same extent as the absolute mujtahid (al-mujtahid al-mutlaq) still someone like him can select the better among two schools of opinion if he knows their proofs (dali1), while realizing that his opinion is not operative in the same sphere as the ijtihad of the mujtahid, and is not admissible in the adjudication process of the judge, nor is it valid for the mufti in giving legal opinions. He is permitted to abandon certain derivations which people previously used if he learns that they lack validity and therefore the scholars who do not claim to be doing absolute ijtihad continue to make compilations, classify, make derivations, and give preference (in legal studies). Since ijtihad has become subdivided in the view of the majority and derivation has as well, and since the goal is only to obtain conjectural opinion (zann) and to base legal obligation on it, then nothing is disqualified by this.

E) As for people below this level, their course in those commonly arising questions is usually what they have acquired from their associates, ancestors, and compatriots among the legal schools that are followed. In those issues which rarely occur they follow the fatwas of their muftis, and in judgments they follow what their judges rule. We have found the reliable ulema from every legal school proceeding in this manner, formerly and recently, and this is what the founders of the schools bequeathed to their associates.

In al-Yawaqit wa'l-Jawahir (Sapphires and Jewels) it is reported that Abu Hanifa, may God be pleased with him, used to say, "One who does not know my indicating factor (dalil) must not give a fatwa based on my opinion," and he, may God be pleased with him, whenever he gave a fatwa, used to say, "Al-Nu`man ibn Thabit, i.e., his own name, has this view and this is the best we were able to do, so if someone comes up with something better, this is more correct." Imam Malik, may God be pleased with him, used to say, "Anyone's opinion may either be accepted or rejected except that of the Prophet of God, may the peace and blessings of God be upon him."

Al-Hakim and al-Baihaqqi reported that al-Shafi'i used to say, "If there is a sound hadith, that becomes my opinion," and in an-other report, "If you see that my opinion opposes this hadith, then act according to the hadith, and throw my opinion out the window." One day he said to Muzani, "0 Ibrahim, don't emulate me in everything I say, but look into it on your own, for this is the religion." He used to say, may God be pleased with him, "There is no final word (hujja) in anyone's saying except that of the Prophet of God, may the peace and blessings of God be upon him, even if there are many who hold such an opinion; nor in an analogy, nor in anything else, and moreover there is nothing at this level except that obeying God and his Prophet with full acceptance is mandatory." Imam Ahmad (ibn Hanbal), may God be pleased with him, used to say, "No one is allowed to argue with God and his Prophet," and he also said to a man, "Neither perform taqlid of me, nor Malik, nor al-

Auza'i, nor Nakha'i, nor others, and follow the rulings insofar as they took them from the Book and the sunna. No one should give a legal opinion unless he knows the opinions given by the ulema in making shari' rulings on issues and knows their legal schools. Thus when he is asked about an issue he will know that the scholars whose legal school he follows agreed upon it, so there is no harm for him in saying that this is permitted and that is not permitted, for his opinion is by way of reporting. If there have been divergent opinions about the issue, there is nothing wrong in his saying, "This is permitted according to so-and-so's opinion and not permitted according to so-and-so's opinion." It is not up to him to choose, for in that case he would be responding with the opinion of one of them whose proof (hujja) he did not know.

It is reported that Abu Yusuf, Zufar, and others, may God be pleased with them, said, "It is not permissible for anyone to give legal responses based on our opinions without knowing from where we got them." It was said to Usam ibn Yfisuf,may God be pleased with him, "You usually disagree with Abu Hanifa may God be pleased with him." He replied, "Abu Hanifa, may God be pleased with him, was given a level of comprehension which we were not, and he discerned through his comprehension things which we don't understand, thus it is not permissible for us to give legal opinions on the basis of his statements when We don't understand them."

Muhammad ibn al-Hasan was asked, "When is it permitted for someone to give legal opinions?" Muhammad replied, "When he is right more often than he is wrong." Abu Bakr al-Askaf was asked, "if there is a scholar in a city who is more knowledge-able than anyone else, is it permitted for him not to give fatwas?" He replied, "If he is one who is capable of doing ijtihad, it is not permitted for him (not to respond)." He was asked, "What makes a person capable of doing ijtihad?" He replied, "That he knows the reasons (indications) of the issue and is able to debate it with his contemporaries if they disagree." It was said, "The minimal condition for ijtihad is having memorized al-Mabsut." (End of quotes from Sapphires and Jewels.)

In the Al-Bahr al-Ra'iq (The Pure Sea) it is reported from Abu al-Laith that he said, Abu Nasr- was asked about an issue which had been put to him previously, "What would you say, May God have mercy on you, if you had four books before you—the book of Ibrahim ibn Rustam, the Adab al-Qadi in the recension of al-Khassaf, Kitab al-Mujarrad, and Kitab) al-Nawadir in the recension of Hisham. First of all, would you permit us to give legal opinions based on them, and secondly, are these books commendable, in your opinion?" He replied, "What has been correctly reported from our associates is a body of knowledge which is approved, appreciated, and worthy of acceptance, but as for giving fatwas—while I do not think that anyone should give legal opinions based on what he doesn't understand, nor should he try to take up people's burdens—however if it concerns well-known issues which have become apparent and been made clear by my associates, I would hope that it would be possible for me to rely on them."

It is also cited in the Bahr al-Ra'iq, "If someone has blood drawn or backbites and he considers himself to have broken the fast, so that he eats—then if this person did not ask a jurist for a legal opinion nor did the (correct) hadith reach him—must he make recompense (kaffara) because this is merely ignorance, and there is no excuse for this within the domain of Islam? Then if he had asked a jurist for a legal opinion and he had given him one, there would be no penalty against him, because the ordinary person must perform taqlid of the knowledgeable scholar ('alim) if he has confidence in his fatwa, so he should be excused for what he did, even though the mufti was in error in the opinion he delivered. If the man did not (personally) request the opinion but he knew about the hadith, i.e., the saying of the Prophet, may the peace and blessings of God be upon him, "The cupper (one who has his blood drawn) and the cupped have broken their fast" and his pronouncement, may peace be upon him, "Backbiting breaks the fast," and he didn't know that this had been abrogated nor its interpretation, then there should be no penalty assessed against him according to the two of them since it is obligatory to act according to the manifest sense of the hadith. Abu Yusuf, however, disagrees with this since he holds that it is not up to the ordinary person to act upon a hadith since he doesn't know about what abrogates or is abrogated. If a person has touched or kissed a woman out of lust or applied kohl, "so that he presumes that he has broken his fast, then he eats, he must pay a penalty, unless he had asked a jurist for a legal opinion and the jurist told him to break his fast, or he had heard a hadith report about this." If a person had made the intention to fast before noon, and then broke his fast, he would not have to make the compensatory payment according to Abu Hanifa, may God be pleased with him, thus he contradicts both of the other two in this way, as reported in the Muhit.

From this exposition it has become evident that the school of the common person is the fatwa of his mufti. Also found in the Muhit in the chapter on "Making up for the Missed Prayers" is that if a common person doesn't have a specified legal school then his course of action should be based on the legal opinion of his mufti as the ulema have declared. Thus if a Hanafi gives him an opinion he should make up for the afternoon and sunset prayers, and if a Shafi'i gives him an opinion then he cannot make them up, and there is no consideration of his personal opinion. If he doesn't ask anyone for a fatwa, or finds out what is sound according to the school of a mujtahid then this is permitted for him, and he has no need to revise this.

Ibn al-Salah (1245) said, "If a Shafi'i finds a hadith which contradicts his school, then he should investigate further. If he has full competence in the apparatus of absolute ijtihad or competence concerning that topic or issue, he can choose independently in acting upon the hadith. However if he is not fully competent to do ijtihad and after he investigates he finds that which opposes the hadith to be problematic, and finds no satisfactory answer to this objection, then he may act according to this hadith on the condition that any non-Shafi'i independent Imam (founder of a school) did so, and he is excused in this instance for abandoning the school of his Imam. Al-Nawawi approved of this and affirmed it.

4) Among them (difficult issues) are that most instances of disagreement among jurists, especially in cases where there appear sayings of the Companions which fall on two sides, such as the Takbirs (pronouncing Allau Akbar) of the Days of Tashriq, the number of Takbirs of the two `Id prayers, the marriage of one in Ihram, (the special sanctified state of one on the Hajj pilgrimage), the manner of doing Tashahhud of Ibn 'Abbas and Ibn Ma'sud, silently (or loudly) pronouncing the Bismillah and the Amin, pronouncing the formula of the call to prayers twice or once during the lqama, and so on—have to do with giving pre-ponderance to one of the two opinions. The pious ancestors did not disagree on the essential legality on all of these opinions, but rather their disagreement concerned which was the more correct of the two things, and a parallel to this is the differing of Qur'an reciters on the (acceptability of) variant modes of reading of the Qur'an.

They usually explained this matter by saying that the Companions differed although they were all correctly guided and therefore the ulema continue to endorse the legal opinions of the muftis in issues of independent reasoning, and to accept the judgment of the judges, and on some occasions they act so as to differ from their legal schools. In these situations you will see the leaders of the legal schools holding each opinion to be valid and dealing with disagreement about the opinion of one of them in such a way that he will say, "This is the more prudent," "this is preferable," and, "I like this better." Or he may say, "We only know about this opinion," and this occurs often in the Mabsut, the Athar of Muhammad (Abu Yusuf), may God be pleased with him, and the discussions of al-Shafi'i, may God be pleased with him. Then there succeeded them a body of people who abbreviated the discussions of the jurists in such a way that they emphasized the disagreement and maintained the preferences of their leaders, and whatever was reported from the pious ancestors which reinforced remaining within the school of their associates and not going outside of it in any circumstance. This is either due to human nature, for every person likes what his peers and nation have chosen even in dress and cuisine; or due to some arbitrary leap arising in considering the proof, or due to other reasons of this sort. Some took this to be fanaticism in religion, but they were completely free from this. Among the Companions and Successors there were those who recited the Basmala and those who did not, and those who pronounced it aloud and those who did not, and those who did the Qunut prayers at the time of the dawn prayer and those who did not; and those who performed the ablution after having blood drawn, nose-bleeds, and vomiting, and those who did not; and those who believed in doing ablution after touching a woman out of lust or touching the male member, and those who did not; and among them were those who did ablution after eating things cooked in fire and those who did not; and those who did ablution after eating camel's meat and those who did not.

In spite of these differences, they used to pray behind one another, as Abu Hanifa or his associates and al-Shafi'i and others, may God be pleased with them, used to pray behind the Imams from Medina who were Malikis and others even if they neither recited the Basmala silently nor aloud; and Harun al-Rashid led the prayer as Imam after having blood drawn and Imam Abu Yusuf prayed behind him and didn't repeat the prayer. Imam Ahmad ibn Hanbal held that ablution was necessary after a nosebleed and being leeched so someone once asked him, "If the Imam had experienced a flow of blood and had not done ablution, would you pray behind him?" He said, "How could I not pray behind Imam Malik and Sa'id ibn al-Musayyab?"

It is reported that Abu Yusuf and Imam Muhammad used to do the two 'Id prayers performing the two Takbirs according to Ibn 'Abbas because Harun al-Rashid preferred the way of performing the Takbir of his ancestor. Once al-Shafi'i, may God be pleased with him, prayed (in the morning) near the grave of Abu Hanifa, may God be pleased with him, and did not perform Qunut out of respect for him. He also said, "sometimes we incline toward the Iraqi (Hanafi) school (of law)." We have previously cited the answers given by Malik, may God be pleased with him, to al-Mansur and Harun al-Rashid. In the Fatawa al-Bazzaziyya it is reported that the second Imam—i.e., Abu Yusuf, may God be pleased with him, prayed the Friday prayer having performed the full ablution at a public bath. He led the prayer and then the congregation dispersed. After that he was informed that a dead mouse had been found in the well of the bath-house. He then said, "In this case, we will use the response of our brothers from the Medinan (Maliki) school that if the water reaches the amount held by two large jars it won't become ritually impure.

Imam al-Khujandi was asked, may God be pleased with him, about the case of a man from the Shafi'i school who had not prayed for a year or two, then he transferred to the school of Abu Hanifa, may God be pleased with him. How should he make up for these missed prayers? Should he make them up according to the Shafi'i school or the Hanafi school? He replied, "He should make them up according to either of the schools provided that he believes in its validity." In the Jami'al-Fatawa it is stated, "If a Hanafi said that he had married a certain woman who had been divorced by the triple formula; then he asked a Shafi'i for a legal opinion and he answered that she was not divorced and that his vow was invalid—there was no harm in his following the Shafi'i in this issue because many of the Companions were on his side."

Muhammad (Abu Yusuf), may God have mercy on him, said in his Amali, "Even if a jurist says to his wife, you are definitely divorced, and he considers that this is equivalent to a triple divorce, then if a judge gives a judgment that the divorce is revoca-ble, he is permitted to live with her."

Likewise is every department about which the jurists disagree, whether in forbidding, permitting, freeing slaves, taking property, and so on. The jurist who has received a verdict counter to his own view must act according to the judgment of the Qadi and forgo his own opinion, and he must hold himself to do what the judge requires and act according to what he told him. Muhammad (Abu Yusuf), may God have mercy on him, said, "Likewise is the case of a man who does not have knowledge and is confronted by some problematic situation, so that he asks the jurists about it and accordingly they give him a legal opinion concerning what is permitted or forbidden. However, the judge of the Muslims hands down a judgment against him which contradicts the fatwa, for in fact this is a matter about which the jurists disagree. In this instance, the person must accept the judgment of the judge and leave aside what the jurists had responded to him.

5) Among (new developments) are that I have found some of them claiming that everything that is found in these voluminous commentaries and thick tomes of legal opinions are the opinions of Abu Hanifa and his associates; so that they do not make a distinction between an actual original statement and the derived statement. They do not understand the meaning of the jurists' statement that according to the derivation of al-Karkhi the ruling on a issue is thus, and according to al-Tahawi it is thus, nor do they make a distinction between their saying, "Abu Hanifa said thus," and their saying, "the response to this case according to the school of Abu Hanifa is thus," or "based on the principle of Abu Hanifa is thus," nor do they heed what the Hanafi scholars like Ibn al-Humain and Ibn Nujaim said about the case of the ten by ten (water) and similarly the case of the condition of having to be a mile distant from water in order to do the ablution with sand and other cases like these—i.e., that these are derivations done by members (of a legal school) and not, in fact, part of the school. Some people claim that the legal school is founded upon these controversial disputes mentioned in the Mabsut of al-Sarakhsi, the Hidaya, the Tabyie and works like these. They don't realize that the first ones among whom these disputations appeared were the Mu'tazila, and that their legal school is not founded upon these. Then the ones who came later liked using these (disputes) for expanding and honing the minds of the students, and whether it was for some other reason than that, God knows better. Many of these ambiguities and doubts may be resolved through what we have set out in this chapter.

6) Among them (new developments) are that I have found some of them claiming that the basis of the disagreement between Abu Hanifa and al-Shafi'i, may God be pleased with both of them, is founded on those principles which are mentioned in the book of al-Pawi and other similar ones. Rather the truth is that most of them are principles derived on the basis of their opinions. According to my view, the statements that:

A) the specific pronouncement (khass) is clear and it needs no explanation,

B) that some additional phrase (in a hadith) can abrogate,

C) that a general statement ((amm) is as certain as a particular one (khass),

D) that there is no preference given (to a hadith) due to a greater number of transmitters,

E) that implementing the hadith of a non-legal expert is not obligatory when it would block the option of using personal opinion,

F) that particularizing a general statement by the import (mafhum) of a condition and a quality' is absolutely out of the question

G) that what a command requires is absolutely incumbent; and other issues like these are principles derived from the statements of the founders (of the legal schools). These are not soundly transmitted from Abu Hanifa and his associates, and holding to them and taking trouble to refute what contravenes them among the practices of the earlier ones in their inferences as Al-Pazdawi and others did, is not more correct than holding what opposes these and responding with what refutes them.

Examples of Type A

An example is that they (the Hanafis) made a principle that the specifying expression (khass) is clear, and that no explanation should be appended to it and they derived this based on the work of the earlier ones concerning His, may He be Exalted, saying, "Bow down and prostrate yourselves," and the Prophet's, may the peace and blessings of God be upon him, saying, "The prayer of a person is not rewarded unless he straightens his back in the bow and the prostration," insofar as they did not hold that coming to rest (during the bow and prostration) to be obligatory, nor did they consider that the hadith was in explanation of the Qur'anic verse. So there was raised as an objection to them what the earlier ones had made of His, may He be Exalted, saying, "Rub your hands over your heads and the Prophet's, may the peace and blessings of God be upon him, rubbing it up to his forelock, insofar as they (the earlier ones) had made it an explanation; and His, may he be Exalted, saying, "The male fornicator and the female fornicator, scourge each of themand His, may He be Exalted, saying "Cut off the hand of the thief, male or female, and His, may He be Exalted, saying, "Until she marries a husband other than him, and those things which had been appended to these (specific injunctions) as explanations after that, so that they had to take great pains in responding as is mentioned in their books.

Examples of Type B

They formulated the principle that the general statement (`amm) is as (legally) definitive as the particular one (khass) and they derived it on the basis of what the preceding ones had done with His saying, may He be Exalted, "Recite of the Qur'an what is easy for you,' and the Prophet's, may the peace and blessings of God be upon him, saying, "There is no prayer without the opening chapter (al-Fatiha) of the Book insofar as they had not considered it (the Prophet's report) a specification, and in his, may the peace and blessings of God be upon him, saying, "There is a one-tenth zakat (`ushr) on spring-watered land" and his, may the peace and blessings of God be upon him, saying "There is no sadaqa (alms tax) on what is below five Awaq (of silver), insofar as they didn't consider the first hadith to be specified by the second, and so on with other subjects. Then this objection was presented to them that His, may He be Exalted, saying, "Such a sacrifice as can be afforded, which is general (‘amm) is (specified as) the female sheep and what is worth more according to the explanation of the Prophet, may the peace and blessings of God be upon him, so they were reluctant to answer this.

Examples of Type F

They made a principle that there should be no consideration (in a command) of the object (mafhum) of a condition and a description, and they derived this based on what the earlier ones had done with His saying, may He be Exalted, "And whoever among you does not have the capacity." Then many objections were raised to them based on the other rulings such as his, may the peace and blessings of God be upon him, saying, "There is zakat on the camel which is a pasture animal" so that they had to make a lot of efforts to respond to these.

Examples of Type E

They made a principle that the hadith of a non-jurist does not need to be acted on if recourse to personal opinion is blocked by it, and they derived this from what they did in rejecting the hadith about the female animals which are sold without being milked for some time. Then there was raised to them an objection to the hadith about laughing aloud (during prayer), and the hadith about the fast not being invalidated by eating out of forgetfulness, so they were reluctant to respond.

Cases of what we mentioned are many, not hidden from the one who pursues the investigation, whereas extensive expositions beyond having this pointed out will not suffice in the case of the person who does not investigate. The opinion of the researchers should suffice you as proof about this issue, i.e., that it is not necessary to act on the basis of a tradition of a person who is known for accuracy and justice but not for legal acumen since the option of using personal opinion is blocked, such as in the case of the hadith about the female animals which are sold without having been milked for some time. This is the opinion of Isa ibn Iban and many of the later ones preferred this, while al-Karkhi and many of the ulema followed him in holding that the condition that the transmitter have legal acumen does not hold due to the precedence of a report over an analogy. They said, "This opinion was not transmitted from our leaders, rather what was transmitted from them is that a single hadith report has precedence over any analogy." Don't you see that they implemented the report of Abu Huraira concerning the fasting person who eats or drinks out of forgetfulness, even if this opposes analogy, so that Abu Hanifa, may God be pleased with him, said, "If not for the report I would have held the analogy (to be correct)." You should also be guided to what is correct by their disagreement over many of the derivations taken from their practice and the fact that some of them refute others.

7) Among (new developments) is that I have found that certain people claim that there are only two groups with no third—"the Literalists" (zahiriyya) and "the People who Exercise Personal Opinion" (ahl al-ra'y)--and that whoever uses analogy or deduction is one of the people of personal opinion—no, by God! Rather isn't what is meant by personal opinion the same as using under-standing and reason? This is not absent from any scholar, nor is this the personal opinion which is absolutely not based on the sunna, for absolutely no Muslim would claim to be doing this, nor is what is meant the ability to make deductions and use analogy (qiyas), for Ahmad, 'ishaq, and even al-Shafi'i too, unanimously were not "People of Personal Opinion," while they used inferential methods and analogical reasoning. Rather what is meant by "People of Personal Opinion" is a group who reopen for derivation issues agreed on among Muslims or among the majority of them on the basis of one of the early persons. Thus what they do in most cases is to relate parallel cases to one another, and to refer to one of the theoretical principles without consulting the hadiths and reports. The Zahiri (literalist) is one such as Dawud Ibn Hazm, who neither accepts using analogies nor accepts using the reports of the Companions and Successors. Between the two groups are researchers among the People of the Sunna such as Ahmad ibn Hanbal and 'ishaq (ibn Rahwayh).

We have gone on about this here at very great length so that we have ranged beyond the discipline which was our subject in this book, although this is not our habit. This is due to two reasons. One of them is that God, may He be Exalted, put into my heart at one time a measure by which to recognize the cause of every difference arising in the religious community of Muhammad, may peace and blessing be on its master, and what is correct according to God and His Messenger, and He also enabled me to confirm this by rational and textual proofs so that there should remain no ambiguity or doubt. Thus, I intended to write a book called "The Summit of Fairness in Explaining the Causes for Juristic Disagreement" and to unequivocally clarify in it these subjects and to copiously cite evidence, examples, and ramifications while sticking to the middle course between excess and negligence at each stage, comprehending all sides of the debate and the principles of what is intended and sought. Up until now I have not been free to do this so that when the discussion here reached the source of the disagreement, I was led by my inner motivation to explain whatever portion I easily could.

The second reason for going on at some length is the factionalism of the people of today and their disagreement and confusion concerning some of the things that we mentioned, to the point that they almost assault those who recite to them God's verses, and "our Lord is the Merciful, the one to ask for help against the blas-phemies you utter."

CHAPTER-XI

Ijtihad – Meaning and Grades

In the writings of shah wali Allah a very important discussion is Iitihad, The discussion, among other things, deals with the meaning of ijtihad, scape and grades of it. Aport from his other writings, al –Insaf and Iqdul-Jid deal with the different important aspects of ijtihad in a fairly detailed way. What follows is a systematically arranged exposition of the discussion scattered about in his different –writings.

The Meaning of Ijtihad

The literal meaning of ijtihad is the expending of maximum effort in the performance of an act. Technically, it is the effort made by the mujtahid in seeking knowledge of the ahkam (rules) of the shari’ah through interpretation. This definition implies the following:

- That the mujtahid should expend the maximum effort, that is, he should work to the limits of his ability so much so that he realises his inability to go any further.
- That the person expending the effort should be a mujtahid. An effort expended by a non-mujtahid is of no consequence, because he is not qualified to do so.
- The effort should be directed towards the discovery of the rules of the shari'ah that pertain to conduct. All other types of rules are excluded.
- The method of discovery of the rules should be through interpretation of the texts with the help of the other sources. This excludes the memorisation of such rules from the books of fiqh or their identification by the mufti. Thus, the activity of the faqih and the mufti cannot be called ijtihad.

The Task of the Mujtahid

The primary task of the mujtahid, as is evident from the above definition, is to discover the ahkam of the shari`ah from the texts. An important fact stated in the study of the sources is that the texts of the Qur'an and the Sunnah, dealing with legal matters, are limited, while the new problems are unlimited. The task of the jurist, therefore, after a study of the primary sources, is to:

- discover the law that is either stated explicitly in the primary sources or is implied by the texts, that is, discover it through literal interpretation;
- extend the law to new cases that may be similar to cases mentioned in the textual sources, but cannot be covered through literal methods; and
- extend the law to new cases that are not covered by the previous two
- methods, that is, they are neither found explicitly or impliedly in the texts nor are they exactly similar to cases found in the texts.

The three tasks mentioned above not only tell us something about the nature of the sources, the way they point to legal rules, but also highlight the manner in which interpretation of the texts or ijtihad is to take place. In other words, these tasks tell us something about the different methods or the modes of ijtihad exercised by the jurist. An understanding of the modes of ijtihad helps draw a clear line between the literal methods of extending the law and the rational methods. Before the modes of ijtihad are studied, it is important to examine some basic assumptions in the light of which the jurist appears to be undertaking his task.

Basic Assumptions Made by the Mujtahid

The primary goal of all interpretation and ijtihad is to discover the intention of the Ultimate Lawgiver, Allah Almighty, with respect to the rules of conduct. The discovery of the intention of the Lawgiver in the texts leads to the assurance that the legal rules derived are truly Islamic. Obedience to such rules leads in turn to the formation of an Islamic legal system, a system based on norms determined by the Lawgiver. If the rules laid down are the result of human invention, the legal system cannot be called Islamic; all laws must conform with the intention of the Lawgiver.

Discovery of the true intention of the Lawgiver requires that the jurist interpreting the texts stay close to the literal and implied meanings of the texts and not give way to his own whims and fancies. The closer he stays to such meanings the greater the assurance that the norms are Islamic. In staying close to the texts and their literal as well as implied meanings, the jurist is guided by two main assump-tions:

1. The first assumption in the words of al-Shafi`i is: "For those who follow the din of Allah there is guidance and evidence in the Book of Allah for each incident faced by them." This means that the Qur'an will

provide guidance, either directly or indirectly, on all legal issues that the Muslims may face.

2. As already stated, the number of verses in the Qur'an dealing with legal issues are limited, while the legal cases or issues faced by the Muslims, or to be faced by them, are unlimited. Even the texts of the Sunnah dealing with legal issues do not go beyond two thousand traditions. This means that there has to be some method, or methods, of extending the general principles in the Qur'an and the Sunnah to cover all legal issues. These methods are evident through a study of the sources, but become even more obvious when the modes of ijtihad are examined.

Texts That are not Subject to Ijtihad

There are certain texts in which there is no need for the mujtahid to expend an effort. The reason is that these texts are the most authentic and the meanings found in them are most clear. The meaning of such texts can be discovered by anyone reading these texts.

In technical terms, the issue revolves around the meanings of the word definitive (qat`i) and probable (zanni). These words have a double meaning, as was explained in the discussion of the sources in Part 2. A text may be qat`i al-thubut, that is definitive with respect to its transmission, and qat'i al-dalalah, that is, definitive with respect to its meaning. 3 All the verses of the Qur'an are definitive with respect to their authenticity or transmission and so are the texts of the mutawatir sunnah. There are very few of these texts that are definitive with respect to meaning. Being definitive with respect to meaning implies that only a single meaning is to be found from the text. For example, 100 stripes in the text pertaining to zinc (unlaw-ful sexual intercourse) means 100 stripes, nothing more and nothing less; it is, therefore, definitive. There is no need for ijtihad to determine the number. As compared to this number, the meaning of "stripes" is not so clear. Are the stripes to be inflicted with a stick, a whip or something else? With what force are they to be applied? To what part of the body? All these questions require an interpretive effort by the mujtahid.

There can, therefore, be no ijtihad in texts that are definitive with respect to transmission as well as meaning. This meaning is also found in a principle that is stated by the Shafiq jurists: "There is no ijtihad with the 'nass." The word nass in this principle does not mean "text." Na is the name for a word or text that gives a single or definitive meaning. Some writers have incorrectly interpreted this word to mean text for purposes-of this rule, which has the effect of eliminating a major part of the activity called ijtihad. The reader should read such texts with caution.

Some of the cases that are considered to be outside the ambit of ijtihad are general obligations and proscriptions: the obligation of prayer; the obligation of fasting; the prohibition of zinc and so on. All such cases are those in which definitive texts with definitive meanings are to be found.

In short, ijtihad is relevant wherever there is a possibility of a text having more than one meaning. Such texts, whether they are defini-i tive or probable with respect to transmission, are always probable with respect to meaning (zanni Al-dalalah). Ijtihad in this context pertains to the discovery of the actual meaning by an examination of the strength of the meaning in various ways and in preferring such meaning over other likely meanings. It is in these methods that the jurists differ. They have adopted rules for interpretation and the application of these different rules may lead to a difference of opinion. This will be obvious in the next two chapters.

Sometimes, a meaning that may be probable is made definitive through consensus of opinion of the jurists. In such cases too, the jurists maintain that there is no possibility of ijtihad, and the meaning settled by ijma` is to be followed by the mujtahid. This was explained in the study of ijma' as a source of law. It is for this reason that jurists like al-Ghazali have stated that the first thing a mujtahid must do when he begins interpreting is to find out if there is Jima' on the issue.

Ijtihad also takes place in cases where no evidence, direct or indirect, can be found for an issue faced by the mujtahid. It is in these cases that some of the modes of ijtihad come into operation, as is explained below.

The Three Modes of Ijtihad

The jurists in general practice three types or modes of ijtihad. In reality, the activity of the jurist cannot be split up into separate modes. Ijtihad is a single seamless process, but for simplification and ease of understanding this activity is divided into three types as Follows:

The first mode

In the first mode, the jurist stay as close as he can to the texts. Refocuses on the literal meaning of the texts, that is, he follows the plain meaning rule. In doing so, he first tries to find explanations for difficult or unelaborated words from the texts themselves. He moves to other sources, like the meaning of words in literature, later. This also depends on whether the words have been used in the texts in their literal sense or their use is figurative (haqiqah and majaz).

The text may not indicate the required meaning through a plain reading. In such a case, the jurist will use other techniques, called dalalat, through which the implied meanings are ascertained. These techniques will be explained in the next chapter.

The second mode

When the first mode of literal construction is exhausted by the jurist, he turns to syllogism, which is called qiyas. This mode is confined to strict types of analogy. These are called qiyas al-ma`na and qiyas al-`illah. Certain loose forms of analogy like qiyas al-shabah or analogy of resemblance are rejected by some jurists. The reason why only strict methods of analogy are approved is again the desire of the jurist to stay close to the intention of the Lawgiver. If very loose methods are adopted the Islamic colour of the legal system may be lost. Qiyas is, therefore, designed to be a strict type of analogy and may be said to apply to the process of finding an exact parallel. The second mode of ijtihad is confined to the use of qiyas.

The third mode

The second mode of ijtihad is confined to the extension of the law from individual texts, while in the third mode the reliance is on all the texts considered collectively. This means that legal reasoning is undertaken more in line with the spirit of the law and its purposes rather than the confines of individual texts.

The spirit of the law and its purposes can be witnessed clearly in the general principles of the legal system. The principles are used by methods like istihsan and maslahah mursalah. The third mode of ijtihad provides the jurist with the opportunity to generate new principles provided he observes a prescribed methodology and fulfils the conditions imposed for such legal reasoning.

The Complete Process of Ijtihdd

It has been stated above that all three modes of ijtihad are practised as a single seamless activity. An understanding of these modes in not enough for visualising the total activity of ijtihad. There are some other processes involved that complete it. The following states and activities collectively depict the process of ijtihad.

- The mujtahid acquires the qualifications necessary for ijtihad.
- The mujtahid understands the different forms of bayan or elaboration of the texts, which is usually provided by the Lawgiver Himself, and also identifies the occasions on which such bayan is invoked.
- The mujtahid exercises all three modes of ijtihad, if necessary, in his effort to derive the law from the sources.
- The mujtahid understands abrogation (naskh) and identifies the occasions on which rules have been repealed by the Law-giver.
- The mujtahid exercises preference (tarjih) and reconciliation (jam') among apparently conflicting sources.

All these activities when combined indicate the complete process of ijtihad. To understand ijtihad fully all these processes are to be understood.

Ijtihad and its Types

ljtihad is obligatory (wajib) for the person who possesses the necessary qualifications for it and is equipped with the skills to perform it. The mujtahid is required to arrive at the hukm shar`i through an examination of all the relevant evidences. Whatever rule he derives after such examination and investigation is the zukm shar`i as far as he is concerned, and it is binding on him to follow it. He should not give up such a rule in favour of taqlid of another mujtahid.

If a mujtahid is also the qadi′ his opinion cannot be set aside by the ijtihad of another mujtahid. Even his own ijtihad on the same issue, arriving at a contrary opinion, will not upset his decision in the earlier case. The only way an opinion arrived at through ijtihad can be declared ineffective is when it is in clear conflict with a definitive text, because in such a case it was not ijtihad ab initio.

A mujtahid is not required to render opinions in all areas of the law, and he may specialise in one particular area if he so chooses. For example, a mujtahid may specialise in personal law alone, and even in this he may choose one area like inheritance. Some jurists have opposed the idea of specialisation in ijtihad and they do not permit it. The apparent reason is that Islamic law, like any other legal system, is a body of general principles that are interrelated and are internally consistent with each other. A mujtahid specialising in one particular area may not be able to maintain the internal consistency required by a legal system and thus his ijtihad may be prone to errors. The opinion of these jurists, who do not permit specialisation, appears to be based on a stronger reasoning.

The Qualifications of the Mujtahid

The qualifications for a mujtahid appear to be a later development in the history of Islamic law. No such qualifications were prescribed during the first two centuries of the Hijrah. It is only after the time of Muhammad ibn Idris al-Shafi'i, the founder of the Shaki school, that such conditions were given greater importance. Prior to this, it was because of the performance of the jurist in the field of Islamic law and his acceptance by the people, who reposed their faith in him, that he came to be accepted as a mujtahid. Nevertheless, some conditions are deemed necessary and these are listed below:

1. Knowledge of the Arabic language: The texts are in Arabic and cannot be understood without a thorough understanding of Arabic. In fact, the Qur'an, and even the texts of the Sunnah, are the standards that often determine the rules of Arabic grammar. Interpreting the texts of the Qur'an and Sunnah, especially for purposes of deriving the law, is no easy job. The mujtahid has to have a very good command of the Arabic language to be able to undertake such interpretation.

2. Knowledge of al-Kitab: The Qur'an is the primary source of Islamic law. This means that it is a source for the law as well as the general principles of this law. Further, it is the source that validates all the other sources of the law. Though the legal texts are considered to be about 600, the jurists have often relied on the other verses as well for strengthening their opinions. The memorisation of the Qur'an, or even the legal texts, is not considered necessary. It is sufficient if the jurist knows the location of the verses in the Qur'an. It is for this reason that some jurists have devoted their lives to the writing of legal commentaries on the Qur'an, often called Ahkam al-Qur'an. A condition within this conditions is that the mujtahid must know and understand all the occasions of abrogation, that is, the repealing and repealed laws, the nasikh and the mansukh. In addition, the jurist must have a knowledge of the asbab al-nuzul or the historical reasons why a certain verse was revealed, because this helps in the understanding of the intention of the Lawgiver; it provides the legislative history of the law.

3. Knowledge of the Sunnah: As the Sunnah provides a legal commentary on the laws in the Qur'an and is also an independent source of the law, the mujtahid must be fully aware of all the precedents laid down by it. This entails a knowledge of the mutawatir, the mashhur as well as the khabar wahid. Today, we have the sahih compilations by the great traditionists like. Imams Bukhari and Muslim. It must be noted, however, that the law that we read in fiqh books was derived and laid down by the schools of law before these compilations were made. It is, therefore, necessary to understand the criteria laid down by the jurists for the classification and acceptance of ahadith. Although many of the rules are common, there are some differences too. Some very good books have been written in the present times that explain the criteria used by the jurists.

4. Knowledge of Ijma`... As stated earlier, some jurists have laid down that the first source to be consulted, before a mujtahid begins his task of interpretation, is ijma`. If there is ijma` on an issue, the mujtahid cannot reopen such issue. In addition to this, knowledge of the principles upheld by ijma.` will guide the mujtahid on other issues.

5. Knowledge of the maqasid al-shari’ah: This condition has been added by later jurists. In this book it has been shown in detail why a knowledge of the purposes of law is necessary for under-standing and deriving the law. As these are ultimate values, a knowledge of Arabic is not essential for understanding the maqasid al-shari`ah and their operation.

6. Aptitude for ijtihad: Another condition that some writers lay down is a natural aptitude for law and ijtihdd. This is more like a God given gift than something that can be acquired. Just like a good knowledge of Arabic does not make a person a poet, the fulfilment of the above conditions will not make a person a mujtahid.

Taqlid as a Methodology

TaqIid, as generally understood, means following the opinion of the schools of Islamic law in matters of conduct. Thus, a Hanafi follows the opinion of the Hanafi school, while a Shafi`i follows the opinion of the Shafi'i school. As opposed to this, ijtihad means that the person in need of an opinion does not follow the opinion of any school, but derives the rule of conduct for himself directly from the sources of Islamic law. Such a person would obviously be designated as a mujtahid, and the mujtahid must have some basic qualifications that we have studied in the previous chapters. Further, the mujtahid must follow a system of interpretation: either an established system of a school or one that he has devised for himself. All persons who cannot lay claim to the status of a mujtahid, due to the lack of requisite qualifications and skills, must "follow the opinion of some mujtahid, that is, they must perform taqlid. Yet, we find that in modern times many scholars have condemned taqlid, and have insisted on the necessity of ijtihad.

The reason for this is that in the writings of some of the earlier jurists taqlid is considered mandatory for all jurists and independent ijtihad is not permitted. This is also termed as the "closing of the gates of ijtihad." There have been many discussions on this issue in modern fiqh literature. In the light of these discussions, many modern scholars maintain that the doors of ijtihad were never closed and this activity should be carried on in the modern world, and taqlid should be shunned.

Do these scholars mean that every layman should interpret the sources of Islamic law for himself and should avoid following the opinions of the schools of law? Do they mean that some scholars should undertake ijtihad and the rest should follow their opinions?

There is another form of taqlid too, in which a layman does not follow one school, but chooses whichever opinion he likes from one of the schools. Thus, a scholar may choose an opinion from the Hanafi school today and tomorrow he may choose one from the Shafii'i school or from some other school for that matter. Is this taqlid or ijtihad, or is it something else?

Our purpose in this chapter will be to answer most of these questions and to determine the exact scope of taqlid as well as its utility in the present times, if any. In doing so, we will determine the function of the jurist whom we have called the faqih, as distinguished from the mujtahid.

Taqlid as a Basis for the Islamic Theory of Adjudication

In the previous part, while discussing ijtihad, we stated that ijtihad is a legislative function, because it lays down the law for the first time. As compared to ijtihad, the purpose of taqlid is to lay down a methodology for the faqih for discovering and applying the law in the light of the already settled law. This is the function of the modern judge too, who discovers the law from the statutes and precedents to settle the disputes brought to him. It is not the task of the judge to legislate or lay down new law in his judgements. If he does this, he is encroaching upon the function of the legislature. Here we are following the generally accepted view and we are not concerned with the debate that questions whether the judge really discovers the law and applies it or whether he does legislate.

In Islamic law, the task of the faqih appears to be the same as that of the modern judge who is settling issues of law and fact. The doctrine of taqlid furnishes us the basic material for developing an Islamic theory of adjudication. In the introduction to this book we stated that the discipline of usul al-fiqh provides us with the basic raw material and the structure through which work on the Islamic theory of adjudication can be carried out, just like it provides us with a methodology for the Islamic theory of legislation in the form of ijtihad. It would be naive to expect that usul al-fiqh provides us with fully developed theories of legislation and adjudication that can be just picked up and implanted in a modern legal system. It does, however, provide us with substantial raw material with which we can easily build.

In this chapter, it is our task to show what raw materials are provided by the doctrine of taqlid. There is also a need to understand this doctrine in depth because it has been unjustly condemned by many modern scholars and blamed for the stagnation that is faced by the Islamic legal system.

Literal Meaning of Taqlid

The word taqlid is derived from qaladah, which is an ornament tied around the neck (like a necklace) or it is the strap that holds the sheath of the sword and is usually swung around the shoulders. The word qaladah is also used to mean the strap by which a piece of wood is hung from the neck of an animal; it prevents the animal from running astray, because it strikes it on the knees when it tries to run. In this sense, the word taqlid carries a restriction within it, and this restriction is found in the technical meaning of the term.

Technical Meanings of Taqlid

In its technical sense, taqlid is defined by Ibn al-Hajj as "acting upon the word of another without hujjah (proof or lawful authority)." There are two ways in which this definition has been understood, and has led to some confusion about the meaning and role of taqlid in the present times.

The first meaning is assigned by modern writers. Abdur Rahim, for example, understands it to mean the following of the opinion of another without knowledge or authority for such opinion. In other words, when a person asks a jurist for an opinion, he should not ask him about the basis for his opinion, whether it has been derived from the Qur'an, the Sunnah or ijma` or some other source; he should follow it without question. This meaning is accepted generally by most modern writers, and it is this form that they condemn. The earlier jurists do not understand the meaning of the definition in this way.

According to the earlier jurists, the word hujjah means permission given by the shari'ah. Taqlid, therefore, means following the opinion of another when the shari'ah has not given permission to do so. This meaning makes taqlid unlawful, that is, whoever follows the opinion of another without permission of the shari'ah, is committing an unlawful act.

Following the opinion of a jurist does not fall within this meaning of taqlid. The Muslim jurists maintain that following the opinion of a qualified jurist is permitted by the shari'ah, and is not taqlid. This means that there are two types of taqlid: prohibited taqlid and permitted taqlid. To understand this thoroughly, the hukm of ijtihild as well as that of taqlid needs to be examined.

The Hukm of Taqlid and Ijtihad

Taqlid, as defined above, is null and void (batin) or prohibited (haram) according to the earlier jurists, whereas ijtihad is obligatory (wajib). This hukm is applicable to all. For the mujtahid it is a universal obligation, and it is incumbent upon him to derive the rules directly from the texts of the Qur'an and the Sunnah. For the layman it is a communal obligation, that is, someone in the community must undertake ijtihad.

This means that following the opinion of another, without the permission of the shari'ah, is unlawful, and is called taqlid. The hukm of such taqlid is that it is null and void. If this is the case, why do some people follow the opinions of jurists in their schools?

Taqlid in Law is an Exemption from the General Rule of Prohibition

To understand the meaning of taqlid in law, let us examine the definition again. According to the jurists, the use of the word hujjah in the definition, "acting upon the word of another without hujjah," excludes this activity from the meaning of taqlid. Al-Shawkani explains that the use of the word hujjah excludes the following four types of activity from the meaning of prohibited taqlid:

- Acting upon the words of the Prophet (peace be on him) is not mode of prohibited taqlid.
- Acting upon ijma` is not prohibited taqlid.
- Acceptance of the word of an upright ('adl) witness by the Qadi constitutes no sort of prohibited taqlid.
- The layman acting upon the word of a jurist is not indulging in the prohibited taqlid.

The Hanafi jurists may add a fifth case to this: acting upon the opinion of a Companion of the Prophet is not prohibited taqlid. These cases do not fall under condemned or prohibited taqlid, because the shari`ah has permitted all these forms; a hujjah (proof) exists for such permission. Some of these cases are obvious, but the case of the faqih is explained by al-Ghazali as follows:

If it is said that you have condemned taqlid, and this (lay-man's taqlid of the jurist) is the very essence of taqlid, we shall respond that taqlid is the acceptance of an opinion without hujjah, but following the opinion of the mufti has been made obligatory (wajib) for the layman through the dalil (evidence) of ijma`, just as it is obligatory for the judge to accept the statement of (`adl) witness.

The authority permitting this activity, and excluding it from the meaning of taqlid is ijma`. Following the opinion of the jurist by the layman, therefore, cannot be called prohibited taqlid, that is, condemned taqlid. Some jurists exclude some more cases from the meaning of condemned taqlid on the basis of the principle of necessity (darurah). The founder of the Maliki school, Malik ibn Anas, is said to have permitted fourteen cases of taqlid. A few of these are given below:

- It is permitted to the layman to accept the opinion of a doctor (tabib).
- It is permitted to accept the opinion of a trader in the valuation of property (as an expert).
- The buyer is allowed to accept the opinion of the butcher that the meat he is buying has been properly slaughtered.
- The statement of a child bringing permission to the guest at the door that he is allowed to enter may be accepted by the guest.

This shows that taqlid is a part of our daily lives and we are indulging in some form of taqlid at each step. The truth of this claim is driven home when we examine our modern legal system.

Taqlid and the Islamic Legal System

In the Islamic legal system, the system of taqlid or following precedents is implemented through the schools of law. The founder of a school has two functions: he lays down the usul or the principles of interpretation and he uses these principles to settle the issues of the law (furu`). Thus, Abu Hanifah laid down the principles of interpretation for the Hanafi school and he used these principles to derive the detailed rulings of the substantive law. The founders of the other schools did the same for their schools. This type of jurist is called the mujtahid mutlaq or the absolute jurist. This jurist is completely independent insofar as he does not indulge in any type of taqlid.

As compared to the founder, there are other jurists who are well qualified to undertake ijtihad. These jurists, however, follow the principles of interpretation laid down by their teacher. They use these rules of interpretation to derive the substantive law, and their opinions in this area may differ from those of their teacher. These jurists are performing taqlid when they follow the opinion of their teacher about the principles of interpretation. This type of taqlid is called taqlid fi al-usul or taqlid in the principles of interpretation. The jurist who performs taqlid fi al-usul is called mujtahid fi al-madhhab or the mujtahid who is independent within the school.

There are other jurists in the school as well who are well qualified, but have not been granted the status of mujtahid fi al-madhhab. These jurists perform only one type of taqlid, and this is called taqlid fi al-furu` or following the decisions of the jurists of the higher grade. These jurists follow the opinions or decisions of the school laid down by the mujtahid mutlaq and the mujtahid fi al-madhhab. A question may be raised at this stage as to which opinion of the school do they follow, because there may be several opinions on a single issue. For example, Abu Hanifah may have issued one opinion on an issue, Abu Yusuf another on the same issue and Muhammad al-Shaybani yet another. The rule for this is well settled: there will always be a single preferred opinion within the school. Ibn `Abidin states this as follows: The preferred opinion of the school is to be followed, and the opinion not preferred is to be treated as non-existent (al-marjuh ka'l adam). It is as if the preferred opinion has abro-gated the other opinions.

There is, thus, no confusion about which opinion of the school is to be followed. This also sets aside the objection raised by some that there are so many opinions in Islamic law that one does not know which opinion to follow. The schools bring uniformity into their law through this method.

In a developed legal system, it is not possible that there be just two or three types of jurists. There are several types, and each developed school has determined the grades of the jurists based on these types. It is through these grades that Islamic law implements its system of following precedents. Ibn `Abidin lists these grades for the Hanafi school as follows:

1) **The first grade:** mujtahid mutlaq or mujtahid fi al-shar`. The mujtahid mutlaq is usually the founder of the school, for example, Abu Hanifah for the Hanafi school. He lays down the principles of interpretation for the school. We have already examined these principles under the meaning of the term asl, while defining usul al-fiqh. The mujtahid mutlaq uses his principles of interpretation to derive the law from the sources (for the mujtahid). In short, this type of independent jurist lays down the principles of in-terpretation as well as the law. In terms of our Islamic theory of legislation, this jurist is the legislator who also lays down the methodology of the legislator.

2) **The second grade:** mujtahid fi al-madhhab or the mujtahid within the school. The mujtahid fi al-madhhab performs taqlid fit al-usul, that is, he follows the principles laid down by the founder of the school, and using these principles derives the law himself. His opinion in the derived law may differ from that of his teacher. Jurists like Abu Yusuf and Muhammad al-Shaybani are within this grade in the Hanafi school. They used the principles determined by Abu Hanifah to derive the law. In the case of muzara'ah (tenancy). for example, they differed with their teacher. Abu Hanifah declared tenancy to be illegal, while the two disciples (sahibayn) declared it legal. The opinion preferred by the school is that of the sahibayn. The jurists in this grade are independent in all respects, except the usul (principles of interpretation). In terms of our theory of legislation, this jurist is also a legislator, but he follows the methodology of legislation determined by the full mujtahid.

3) **The third grade:** mujtahid fi al-masa''il or the mujtahid for new issues. The mujtahid fi al-masa'il determines answers to cases that are not settled by the jurists of the first two categories. In the Hanafi school, jurists like al-Khassaf, al-Tahawi, al-Karkhi and al-Sarakhsi are placed in

this grade. These jurists cannot question the cases that have been settled by the jurists of the first two grades. Their function is said to be the determination of new unsettled cases. A comparison of the methodology of these jurists with those in the next grade shows that the methodology is the same and is called takhrij. These are the jurists whom we will be calling faqihs in this book, along with those in the next grade. We now step into the area of adjudication, and this jurist is like the judge of the Supreme Court, so to say, who is filling the gaps left in statutes or earlier precedents.

4) **The fourth grade:** ashab al-takhrij or those jurists who clarify the law of all the existing cases. The great jurist Abu Bakr al-Jassas is placed in this category. The truth is that he was no less than any of the jurists in the previous category, and the method-ology used by him was the same as that used by the mujtahid fi al-masa'il. This methodology will be explained at some length in the next chapter. For this purpose, we will combine these two grades into one, that is, the mujtahid al-masa’il and the jurist practising takhrij and call both the ashab al-takhrij.

5) **The fifth grade:** ashab al-tarjih or those who preferred the stronger opnions in the school so as to bring uniformity in to the law. Jurists like Abu al-Husayn al-Quduri, al-Kasani, al-Marghinani (the author of al-Hidayah) are placed in this grade.

6) **The sixth grade.** The rest of the well known jurists in the Hanafi school are placed in this grade. They are said to recognise the stronger opinions preferred by the jurists of the previous grade. Most well known jurists like Sadr al-Shari`ah, Ibn al-Humam and the authors of the authoritative texts (mutun mu`tabarah) would fall in this category. An examination of their method and their works reveals again that they were no less than the jurists in the previous category.

The mujtahid and the faqih

When we focus on the methodology being used by each grade of jurists, and on the basis of what has been said above, we can easily classify the jurists into two grades, as follows:

- Those who may be classified as full mujtahids performing the legislative function and settling the law. In this category we will place the jurists of the first two grades, that is, the mujtahid mutlaq and the mujtahid fi al-madhhab. Their function was legislative in the sense that they were laying down the law in the first instance by deriving it directly from the primary sources, that is, the Qur'an and the Sunnah. Today, this function is to be performed by the state and the legislature assisted by various bodies like the Council of Islamic Ideology and the Federal Shariat Court of Pakistan. This, of course, applies to Pakistan and each Muslim country may have its own unique system for this. At the international level, the OIC has established the Islamic. Fiqh Academy, but this Academy needs to be more open and to entertain opinions of jurists other than those they have selected as their members. Further, the Academy needs to directly link and publish the basis for adopting a view. At present the research published by the Academy is not linked to the opinions. In other words, a dalil for each opinion needs to be made public. Without this the opinions of the Academy will have no persuasive force. We have also indicated in the previous part that the methodology of ijtihad has to be fully integrated within the modern legislature if the process of Islamisation is to have real meaning. At present the legislature is free to use whatever standards it likes, although under the Constitution it is bound to impart Islamic justice in all the laws that it frames.

- Those who can be classified as full faqihs performing the judicial function, that is, discovering the law through the general principles and extending it to new cases with the help of reasoning from principles. In this category we would place all the jurists in the last four grades. The broad methodology used by these jurists we will call takhrij or the extension of the law by reasoning from principles. This methodology is evident in the works of jurists like al-Karkhi, al-Dabusi and al-Sarakhsi. It forms the subject matter of this part of the book. Today, the methodology of takhrij is to be exercised by the higher courts in the country. In this work, law professors and lawyers also participate using the same methodology. In other words, all cases in the law courts are to be settled through the methodology of takhrij, and it is a methodology in which judge:. professors and lawyers are already well versed; it is nothing new for them. What needs to be developed and refined, however, is the Is-lamic theory of adjudication. This theory must determine in broad terms the standards the judges are to use while deciding cases and delivering judgements.

We may now turn to the sources of law for the second grade of jurists, performing the judicial function. The purpose of studying the sources of law for the faqih under a separate heading is to indicate some of the principles and standards that a Muslim judge has to keep in view. A large number of principles have been quoted in the attempt to show that some of those principles are treated as fundamental by the system, while others have been deri‘ed by the jurists from the study of various cases of the law. The mod- ern judge may disagree with some of the latter principles and improve upon them, provided he ensures the analytically consistent development of the Islamic legal system. We would like to end this chapter by saying that the methodologies of ijtihad and takhrij, which we have equated with legislation and adjudication, are not water-tight compartments, and there may be some overlapping, especially where the *maqasid al-shari'ah* are concerned. In addition to this, there are many legislative presumptions that are used both by the mujtahid and the faqih. The important thing is to keep the two functions conceptually apart, and these functions can be identified with a single simple statement: judges do not legislate, they merely discover the law.

CHAPTER-XII

Shah Wali Allah's Writings on different Aspects of Islamic Fiqh and Jurisprudence

Preliminary note

As the Shah occupies a very prominent position as a scholar, so he ranks much higher in the long list of the authors and writers on different subjects and themes of Islamic teachings His works are specially known for the sublimity of thought and meaning and lucidity of his style His Arabic style is specially regarded closer to the native Arabs than that of the most of non-Arab writers. His language is very much similar to the ingenuous Arabs, free from the flaws commonly peculiar to that of the non-Arabs scholars. By some critics he has been regarded the introducer, even inventor of a style which is comprehensive, forceful, terse, still expressive, enriched with a great amount of similarity with the Holy Prophet's style.

Peacefulness of His Mind

About Shah's academic works one point is also important to note. It is to keep full command over his intellect and mental faculties even in the face of the most disturbing political conditions and ever deteriorating political situation and the state of the law-and-order around him. He kept himself engaged in literary pursuits and religious reform unmindful of his surroundings. Syed Sulaiman Nadwi has hinted at serenity of the Shah in his own inimitable style. Extremely few writers have been there whose compositions are free from the influences exerted in their age or transcend the time and space, or , at least, show no " concern to the intellectual torpor common among their compatriots. The Shah's writings, however, leave his times and circumstances in the shade and completely ignore personal reactions to the inconveniences faced by him. The reader never feels that he wrote them at a time when law and order had completely broken down in the country, chaotic conditions prevailed everywhere and Delhi, having lost its position as the centre of a great empire, was the scene of intrigues and conspiracy, where every soldier of fortune was dreaming of establishing his own kingdom, Sikhs, Marathas, Jats and Rohilas had become rebellions on the one hand, and adventures like Nadir Shah and Ahmad Shah were invading the country every now and then. Delhi was sacked several times during this period, but the Shah, who was witness to all these happenings, never spoke of them nor there is any trace of anxiety or sorrow he would have naturally felt in his writings. It seems as if he occupied some celestial sphere far away from terrestrial incidents and occurrences. His composure of a real man of learning: Verily in the remembrance of Allah do hearts find rest.

Cultivation of knowledge in the true sense is of course a form of the recollection of God. No wonder, therefore if it produces serenity of mind and tranquillity in heart. Anyone going through thousands of pages written by the Shah would hardly come across anything alluding to the tumultuous situation obtaining in the twelfth century when everything was disturbed by chaos and turmoil. He would feel immersed in a river of knowledge flowing placidly, undisturbed by the commotion around it produced by the march of events.

CHAPTER-XIII

Writings of Shah Wali Allah on Fiqh

The Shah wrote a great number of works on *hadith,* its allied subjects and fiqh. To some biographers his works are two hundred odd. Following is a short description of his writings on hadith, deep meaning of hadith, Fiqh and ijtihad.

1. *Musaffa*- A commentary on *Muwatta* of Imam Malik in persian.
2. *Musawwa*- A commentary on *Muwatta* of Imam Malik in persian.

   Both these works were written by the Shah to illustrate the way of teaching *hadith* and drawing legal rulings from them. They also show the depth of his knowledge and insight into *fiqh* and *hadith.* The Shah gave precedence to the *Muwatta* of Imam Malik in the six most authentic works of *hadith* and assigned it the same place as given to *Ibn Majah* by others. He always pleaded to give it precedence in teaching of the subject.

   He writes in his will.

   "When one has attained proficiency in Arabic, he should be taught *Muwatta* with the chain of narration through Yahya b. Yahya Masmudi. No deviation should be made in this regard, since it forms the central work in *hadith* literature. Its study is of great merit. I have studied it thoroughly.
3. Iqdul Jid fi Ahkam-al- Ijtihad w al-Taqlid

   At the very title illustrates, the writing is a short treatise in the Arabic language which deals with in a fail detail the issues of Ijtihad and Taqlid.
4. Al-Insaf fi Bayan-i-Asbab al-Ikhtalaf" : Two epilogues are included in the *Hujjat Allah-al-Baligha,* which cover 22 pages and are divided into four sections. According to the publisher these concluding chapters were included in only one manuscript of the *Hujjat.* In the concluding lines of these epilogues, the Shah says :

'I had decided to write a treatise under the title *Ghayat-al-Insaf fi Bayan-i-Asbab al-Ikhtalaf*", in which I wanted to discuss in some details the reasons for differences, illustrating them with examples and evidences. But I could not find time for it. However, while dealing with the issue in this work (*Hujjat-Allah al-Baligha*), I thought it proper to write whatever I had in mind at the time, since it was then easier to do so."

It seems that the Shah was able to find time to rewrite this portion, with certain additions. The treatise subsequently completed makes certain additions and omissions in the epilogue spoken of earlier.

The *Al-Insaf* is a unique work on the topic and has seen several reprints in India and other countries. It was also published in Egypt, first in 1327/1909 by Shirkata al-Matbuat al-Ilmiyah and then by Maktabata al-Mansurah. It has been checked and edited by the noted Traditionist Shaikh "Abdul Fattah Abu Ghuddah of Egypt"

5. *Tawil al-Ahadith* (Arabic) : It recounts the stories of different prophets mentioned in the Qur'an in order to draw out lessons and rules of *Shariah* from the Quranic descriptions. Though brief, it shows the Shah's deep knowledge of the Qur'an. The work was published by the Shah Waliullah Academy, Hyderabad (Pakistan).
6. *Ad-Durrus Thamin fi-Mubbashshiratil Nabi al- Amin* (Arabic). Although it is a collection of glad tidings the Shah and his ancestors had from the holy Prophet, this has a relation to the Islamic Fiqh in a way. In this book the Shah reports that about the existing schools of Islamic fiqh he consulted with the spirit of the Holy Prophet as to which one was closer and more preferable. My heart received an instruction from the Prophet that all of these schools were equal in respect of merit and excellence and Muslims are at liberty to choose anyone out of those according to their intellectual inclinations. It was published with the *Musalsalat* and *Al-Nawadir* in 1391/1970 by Kutub Khana Yahyawi, Saharanpur.
7. *Fuyuz al-Haramayn* (Arabic) : The book contains autobiographical reminiscenes and a record of spiritual transports and attainments during the Shah's stay in Hijaz alongwith certain scholastic and mystical discussions. The work being meant for the learned would be found difficult of

comprehension by those who are not well-acquainted with the philosophy of religion and spiritualism.

8. *Qurrat al-'Aynayn fi Tafdhil al-Shaykhayn* (Persian) brings forward the evidences to prove the superiority of the first two caliphs, which has seen several reprints.

9. *Hujjat Allah al-Baligha*

The *magnum opus* of Shah Waliullah, the *Hujjat Allah al-Baligha*, is a comprehensive and cogent work presenting a synthesis of the Islamic creed, devotions, transactions, morals, social philosophy, statecraft and spirituality. All these have been balanced and integrated in such a perfect manner that they appear to be jewels of the same necklace or links of the same golden chain. It also does not suffer from the usual weaknesses found in most of the old works, written apologetically or aggressively. This moderation and balance is the result of the Shah's deep and wide knowledge of *hadith* and his bent of mind fostered by the study of the Prophet's character as well as keeping company with pious and virtuous scholars. Few works can compare the compendious yet clear and cohesive exposition attempted in the *Hujjat Allah al-Baligha*, which laid the foundation of a new dialectical theology for the modern age of reason. It is thus a work which can satisfy any truehearted man endowed with common sense, provided investigations of the Shah. So far as we are aware there is no other work in any language known to us written for the investigation of the truth of any religion on a rational basis or at least it has not come to light.

India or rather the entire world of Islam was ripe by the close of the twelfth century A.H., owing to several social, intellectual and pedagogic developments, to enter into a new age of reason which was to stimulate a general taste for discovering the rationale of the precepts and directives of *Shari' ah* . This new trend would have surely misled many a mind and pen; for the *hadith* and *sunnah* were to be singled out, due to peculiar circumstances of the time, for criticism and creating doubts about their authenticity. No body could have succeeded in meeting this challenge if he had not been well-versed in the Qur'an ant the *Sunnah* , philosophy, theology, ethics, psychology, sociology and economics (of his time) and also possessed the purity of spirit known as *Ihsan* in Islamic idiom.

All those factors demanded that before the new era began, some one should deal, within human limitations of course, with the issues that were going to be raised shortly. Such a man need not have been impeccable nor his knowledge was to transcend his own time and space; he was bound to reflect on his past and contemporary streams of sacred and secular knowledge and his pattern of education; yet, he had to be a faithful interpreter of the *hadith* and *sunnah.*

Writing about the reasons and impulses which led him to pen the *Hujjat Allah al-Baligha*, the Shah says :

"The most delicate and deep as well as sublime and glorious aspect of the science of *hadith* consists of its wisdom and rationale and characteristics and significance of religious injunctions which impart insight into them and save man from confusion and eccentricity."

10. Izalat Al-Khifa 'An Khilafat Al-Khulfa

Significance of Izalat al –Khifa

Another remarkable work by Shah Waliullah, the *Izalat al-Khifa 'an-Khilafat al-Khulfa,'* is also an incomparable work in several respects. As scholarly and gripping work which exhibits the depth of the Shah's thought as well as his brightness and profound reflection over the Quranic verses. Anyone who goes through it, unless he is not biased, will be convinced that the author is not merely a schoolman but blessed with divine grace and intution in composing this work. The Shah himself says in its introductory remarks.

"The fact is that divine effulgence inundated the heart of this weakling with the knowledge about this matter so exhaustively that he was absolutely convinced that affirmation of the caliphate of these persons (the first four caliphs) constituted one of the fundamental principles of Islamic creed. So long as this essential foundation is not firmly established, none of the *Shari'ah's* injunctions will find a sound and secure support."

Several eminent scholars who were deemed as masters in the science of logical reasoning but differed with the Shah on a number of issues, had to acknowledge his erudition and penetrating perception on going through this work. The author of *Al-Yan'e al-Jani,* Muhsin b.Yahya of Tirhut says : "I noticed that whenever our mentor Maulana Fazl-i-Haq Khairabadi (d. 1278/1861) had some leisure, he was engrossed in a particular book. We found his gripping interest in the book unusual and tried to find out what was that work and who was its author. One day our teacher remarked, 'The author of this book is an ocean of immense expanse.' We then came to know that it was *Izalat al-khifa* of Shah Waliullah, a copy of which had somehow reached the Maulana"

Among the celebrated scholars of the later times, Maulana 'Abdul Hai Firangi Mahli (d. 1304/1887) was an outstanding academician. In his well-known work *At-T'aliq al-Mumjadda'ala Muwatta al-Imam Muhammad* he says that "*Izalat al-Khifa* is the solitary and matchless book on its subject."

Correlation between Hujjat Allah and Izalat al-Khifa

In the *Hujjat Allah al-Baligha,* the Shah had presented a coordinated and comprehensive concept of Islam with reference to its scheme for human life, culture, customs and social organisation. In it the shah demonstrated that a healthy and vigorous society avoiding all excesses could not come into existence without accepting the creed of Islam and acting on the principles laid down by it for social behaviour. This scholarly work contained material which could satisfy the inquisitive minds and the intellectuals of the coming generations, but there still remained the need to elucidate the characteristics of a real Islamic society, its objectives and sphere of activity. He had to show, in the light of history as well as the Qur'an and the *sunnah*, that the institution of *khilafat (*caliphate*)* was meant to furnish a practical example to be followed by Muslims for all times to come. This was also necessary in order to clear the misunderstandings created long ago about this institution which had given birth to a very unfortunate schism in Islam. In fact, the predominance of Iranian nobility in the days of the Shah had given rise to a sort of intellectural anarchy among the Muslims which had shaken not only their creed and social behaviour but also endangered the continuance of their authority over the country. It had, in fact, made uncertain the future of Muslims in the country.

Contrary to the general opinion held by the populace who were not aware of the history and fundamental precepts of this splinter group, nor had any knowledge of their authoritative works, this fraction was not just another juristic school within Islam. Its concept of Islam was different from that based on the Qur'an and the *sunnah* and the grandeur and finality of prophethood. It was a school of thought in itself, running parallel to the accepted view of Islam. Its creed about Imamate, which makes it equal or even superior to prophethood in certain aspects, is enough to bring out its fundamental differences with the accepted creed of Islam.

In the prelude to the *Izalat al-khifa*, the Shah explains why he came to write it :

"The poor Waliullah says that innovations of the Shi'ah's have taken roots and the common people have been deeply impressed by them. This has created doubts and unseemly ideas in the minds of certain persons about the *Khilafat-e-Rashida*"

11. *Al-Juz-al-latif- Tarjimat-al-'Abd al-Dhayif* (Persian), It forms part of *Anfas-al-Arifin*, which has also been published separately. It contains a brief autobiograhpical account and some reminiscences of the Shah. This book also helps us in understanding the Shah's juristic inclinations.

The above furnished brief description of the Shah's juristic works establish it beyond doubt that Shah Wali Allah has offered a richer contribution to the scholarly tradition of Islamic fiqh. A deeper study of the Shah's works and academic legacy creates in the student an interpretational ability, simultaneously imparting him wider intellectual thinking and ideological moderation.

Through a single lamp placed inside this house:

Galaxies have come into being everywhere you go.

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- Al-Yani al-Jani – Tirhati, Bihari Muhsin.
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- Hujjatulahil Baliqhah - Shah Wali Allah
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